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ESSAYS

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ESSAYS

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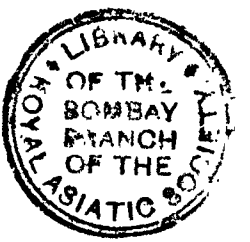
By NASSAU W. SENIOR, Esq.

IN TWO VOLUMES.

VOL. II.



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HISTORICAL AND PHILOSOPHICAL ESSAYS.

CHAPTER V.

THE OREGON QUESTION.*

NORTH-WESTERN AMERICA is probably the largest portion of the world yet unsubdued by cultivation. From about latitude 32° to 70°, and from longitude 125° to 95°, boundaries enclosing a space of more than 4,000,000 square miles, the real occupants of the country are the aboriginal hunters and fishers. Two or three Russian, English, and Mexican trading stations on the coast, and in the interior a few English hunting posts, and some missionary establishments supplied by Mexico and the United States, are the only points inhabited by civilised men. About 500,000 Indians, and about 10,000 whites, constitute the population of a district more than one-third larger than Europe, and situated for the most part within the temperate zone. The whole is intersected from north

* From the Edinburgh Review of July 1845.

17. 12

to south by a chain called, to the north of latitude 42°, the Rocky Mountains, and to the south of that parallel, the Sierra Anahuac, which is in fact a continuation of the Andes. Between these mountains and the Pacific, from which they are at an average distance of 500 miles, run intermediate ranges, some parallel and some from west to east, so as to leave level a very small portion of the country. The rivers which flow from the eastern slopes of the Rocky Mountains are the great rivers of North America—the Mackenzie, the Missouri, and the Rio Grande. On the western side they are few, interrupted by falls and rapids, closed at their mouths by bars, and, in the earlier part of their courses, generally confined by precipitous banks of 1,000 or 1,500 feet in height.

We have said that the occupants of the territory are the Indian tribes; but the greater part of it is under the nominal sovereignty of Russia, England, the United States, and Mexico. The Russian boundary begins at the southernmost point of Prince of Wales's Island (lat. 54° 40′), then runs in a north-western and northern direction to the Arctic Ocean; so as to include first a narrow strip of coast, and then a peninsula washed by three seas, and forming the north-western extremity of the continent. The British portion includes all that is east of the Rocky Mountains, and north of latitude 49°. The boundary of the United States comprises all that is east of the Rocky Mountains, from latitude 49° to 42°; and then runs in a south-easterly direction, until it reaches the rivers which form the boundary of Texas. All that remains south of the forty-second parallel belongs to Mexico.

Between these limits lies the unappropriated Oregon country, bounded on the north by the parallel 54° 40′, on the east by the Rocky Mountains, on the south by the forty-second parallel, and on the west by the Pacific. It is about 650 miles in length, and of an average breadth of about 550—narrower towards the north, and broader towards the south—the Rocky Mountains running, not parallel with the coast, but in a south-westerly direction. It contains, therefore, about 360,000 square miles; more than three times the surface of the British islands. The northern part of the coast, above the forty-eighth parallel, is protected by numerous islands, the largest of which, Vancouver's Island, is about two-thirds of the size of Ireland. Along the straits which separate these islands from the continent, are many excellent harbours; but down the whole coast of the Pacific, from latitude 48° to Port San Francisco, far within the Mexican frontier, there is no refuge except Bullfinch harbour and the Columbia—the former of which can be entered only by small vessels, and the latter is inaccessible for eight months of the year, and dangerous at all times.

We have already said that the whole country is intersected by ranges of mountains. Most of them are loftier than our loftiest Alpine ranges, and some are supposed to equal, or even to exceed, the highest Andes. One consequence of this is, that the climate is severe except in the south-western valleys, where it is tempered by the neighbourhood of the sea. Another is, that only a very small portion of the land is capable of cultivation. The best

portion is the valley between the Kalmet Mountains and the Pacific, a strip about eighty miles broad and three hundred long, watered by the Columbia and by its tributaries, the Cowlitz on the north, and the Willamet on the south. But even of this Oregon Felix, Mr. Greenhow states that only from one-eighth to one-tenth is cultivable. Farther to the west the land rises into elevated plains, sometimes of rock and sometimes of sand, without wood and almost without vegetation, intersected indeed by rivers, but by rivers which bring no fertility.

The banks (says Captain Wilkes) of the Upper Columbia are altogether devoid of any fertile alluvial flats, destitute of even scattered trees; there is no freshness in the little vegetation on its borders; the sterile sands reach to its very brink; it is scarcely to be believed, until its banks are reached, that a mighty river is rolling its waters past these arid wastes.*

Towards the north, a higher latitude and a still greater elevation render the country still less fit for the abode of man. But even here some fertile valleys are to be found. And Mr. Dunn describes the lower part of Vancouver's Island as, on the whole, the most habitable portion of this inhospitable territory.†

But though generally incapable of tillage, the south-western part contains some districts not unfit for pasturage, and others which are rich in timber. The rivers are full of fish, and the northern part abounds, or till lately did abound, with furred animals.

Until the last three or four years, the only use made of

* Vol. iv. p. 429. † Dunn's Oregon, p. 242.

it by civilised men has been as a mart for the purchase of furs and skins. The earliest adventurers in the North American fur trade appear to have been the French Canadians. At first, in the beginning of the seventeenth century, when the wild animals were plentiful and the Indians numerous and powerful, the white traders remained in their towns on the banks of the St. Lawrence, and were satisfied with the skins brought to them by the hunters. As this supply diminished, and as the Indian tribes were thinned and cowed by the destructive proximity of civilisation, the traders found it necessary to penetrate the wilderness, and barter with the hunter on his own territory. The bold men who engaged in this traffic had to encounter every form of hardship and danger. They had to deal with savages, selfish, cruel, and treacherous; intellectually, and, bad as the whites were, perhaps morally, their inferiors—beings with whom they had no sympathy, towards whom their only relation was a mutual struggle to kill, to overreach, or to plunder. Under such circumstances, and in a country without law or public opinion, the *coureurs des bois*, as the French fur-traders were called, degenerated—as civilised men exposed to such influences always will degenerate—into intelligent beasts of prey; uniting the foresight, the perseverance, and the powers of combination of the white to the rapacious and unscrupulous ferocity of the Indian. The remedy adopted by the French Government was, to prohibit all persons from entering the Indian territory without a license,

and to make the continuance of the license depend on their conduct.

In 1669, an association was formed by Prince Rupert to prosecute an English fur trade; and in 1770 its members were incorporated by charter, under the title of the Hudson's Bay Company. To this Company Charles II. granted, as absolute lords and proprietors, all the lands on the coasts and confines of the seas, lakes, and rivers within the Hudson's Straits, not actually possessed by the subjects of any other prince or state, and the exclusive right of trading with the inhabitants. And the charter proceeds to threaten all who may intrude on their privilege with the forfeiture of ship and merchandise, half to the Crown and half to the Company.

In 1749, nearly eighty years after the creation of the Company, an attempt was made to deprive them of their charter, on the ground of non-user; and it certainly appeared that they had done but little. They had at that time only four small forts, occupied by 120 men. Their exports for the ten preceding years had amounted only to 36,000*l.*, their expenses of management and establishment to 157,000*l.*, and their imports to about 280,000*l.*; so that their net profit was about 8,000*l.* a year.* At this time the value of the furs annually imported from Canada into Rochelle, amounted, according to the rate fixed by the Company, to 120,000*l.*, or *more* than four times as much.†

* Reports from Committees of the House of Commons, reprinted in 1803. Vol. ii. p. 215.

† Anderson, vol. iii. p. 237.

In 1763 Canada was ceded to England. Having been under the sovereignty of France in 1670, it was not included in the Company's charter. The vast western regions were now open without the necessity of a license; and the fur trade was prosecuted at first by individuals, and afterwards by associations, which all, ultimately, were consolidated in the North-West Company. Of this great Company—of its wealth, its power, its feudal discipline, and its feudal magnificence—Mr. Washington Irving has given a vivid picture in the introduction to his 'Astoria.' The Hudson's Bay Company, with the characteristic inactivity of an ancient body protected by charter, remained quietly at their posts, like the earlier French traders, and purchased the furs which the Indians brought to them. The North-West Company explored the forest, the mountain, and the lake, frightened the Indians by their power, destroyed them by supplies of spirits and of arms, and for a time were almost masters of the continent between the Rocky Mountains and the Canadian lakes.

But the fur trade, even when best managed, has always been a decaying trade, the reproduction of wild animals never equalling their consumption. Conducted as it was by traders and Indians, anxious only for immediate gain, who killed indiscriminately the male and the female, the full-grown and the cub, it became more destructive, and yet less productive, every year. As their original hunting-grounds were exhausted, the North-West Company pushed their parties and their posts towards the west. About the year 1806, they are supposed to have first crossed the

Rocky Mountains, and to have established posts on the northern head-waters of the Columbia. About the same time they advanced north into the territories of the Hudson's Bay Company, which at length had also found it necessary to establish posts in the interior. In 1812, that Company for the first time made an attempt to exercise their rights of colonisation. They sold a tract on the shores of Lake Winnipeg and of the Red River to Lord Selkirk, who planted there the germ of a considerable colony. The North-West Company, with the unscrupulous ferocity which a life among savages seems to produce among the members of even the most civilised nations, for some years waged a partisan war against the Hudson's Bay posts. Sometimes they merely drove away their inhabitants by force, or by cutting off their means of support; sometimes they waylaid and destroyed them on their route; and at length, in the year 1814, they organised an expedition against the Red River settlement, which, after a civil war of two years, ended in the defeat and massacre of the governor, Mr. Semple, with his immediate companions, and the expulsion of the survivors.

It was now obvious that the contest between the companies would produce the ruin of one or of both; and a successful attempt was made to consolidate them. But this alone would not have been a remedy. The experience of a century had shown that the indiscriminate admission of civilised men as traders into the territory of the Indians is destructive to the morals of the former, and not only to the morals but to the existence of the latter. It has been

tried by the French, it has been tried by the English, and it has been tried by the Americans; and in every case the natives have been swept away by war, disease, and famine; and the whites have exhibited a frightful mixture of all the vices of civilised and savage life.

I have heard it related (says Mr. Wyeth, himself an American) among white American trappers as a good joke, that a trapper who had said that he would shoot any Indian whom he could catch stealing his traps, was seen one morning to kill one; and on being asked if the Indian had stolen his traps, he answered—'No; but he looked as if he was going to.' An Indian was thus wantonly murdered, and white men laughed at the joke.*

The union of the two great companies, though it would have cured the mischief of their competition, would have stimulated the enterprise, and let loose the evil passions of hundreds, or perhaps thousands, of private adventurers. To prevent this, and also to subject to the influence of law the British traders who might be allowed to visit the Indian territory, the 1 & 2 Geo. IV. cap. 66, was passed.

That Act, after reciting that the animosities and feuds arising from the competition of the Hudson's Bay and North-West Companies had for many years past kept the interior of North America in a state of continued disturbance, enacts—that it shall be lawful for his Majesty to give license to any company or persons for the exclusive privilege of trading with the Indians in any part of North America, not being part of the territories of the Hudson's

* Mr. Wyeth's Memoir. Report on Territory of Oregon. 25th Congress, 3rd Session, Report 101.

Bay Company, or of any of his Majesty's provinces, or of any lands or territories belonging to the United States. The Act then gives civil jurisdiction to the Courts of Upper Canada over every part of America, not within the existing British colonies, and not subject to any civil government of the United States. It enables his Majesty to appoint within these limits justices of the peace, and to give them civil and penal jurisdiction, not extending in civil suits beyond 200*l.*, or in penal cases to death or transportation. Cases beyond these limits are reserved for the courts of Upper Canada.

In pursuance of this Act, charters had been granted to the Hudson's Bay Company, 'for the exclusive trading with the Indians in all such parts of North America to the northward or to the westward of the territories of the United States as shall not form part of any of the British provinces, or of the territories of any European power.' The charter requires the Company to provide for the execution of civil and criminal processes over their servants, and to frame and submit to the Crown rules for conducting the trade, which may diminish or prevent the sale of spirituous liquors to the Indians, and promote their moral and religious improvement. And it declares, that nothing contained in it shall prevent his Majesty from establishing any colony within the territories in question, or from annexing them to any existing colony.

It will be observed that the charter contains no clause authorising the Company to form settlements. Not only have they no power to grant lands, but they have no

power even to hold them. The charter gives them as against all other British subjects, but only as against them, the exclusive right of trading with the natives, according to regulations to be approved by the Crown; and it requires them to deliver up their own servants to the jurisdiction of British tribunals. This is the whole amount of the privileges which it grants, and of the duties which it imposes. They cannot acquire for themselves the property, or for the Crown the sovereignty, over a single acre.

This, however, does not apply to the vast region comprised in their original charter of 1670. In that region they are lords of the soil, and it is there therefore, on the banks of the Red River, that they have formed their principal establishment. In that remote colony there are now more than 5,000 persons—a Roman Catholic bishop, a cathedral, and seven or eight other religious ministers. The Company sell their land at 12*s.* 6*d.* an acre, and the plantations extend for fifty miles along the river.* From thence their posts are dotted about from the Atlantic to the Pacific. They are in general stockades, with little wooden bastions at the corners capable of holding a travelling party of thirty or forty persons, but seldom tenanted by more than four or five permanent inhabitants. The largest is Vancouver on the Columbia, about ninety miles from its mouth, and accessible by vessels of not more than fourteen feet draught. It consists of a stockade enclosing four acres, a village of sixty houses, stores, mills, workshops,

* Simpson's *Travels*, chap. vii.

a farm of 3,000 acres, and a considerable quantity of cattle for the supply of the Company's posts. Another is Fort-Nasqually on the sea-coast, within the Straits of Fuca.

The purposes for which this post has been established require some explanation. The supply of the Russian settlements with provisions, and the Sandwich Islands with timber, has turned out a profitable trade; and it is supposed that the ships which carry supplies to Vancouver might, on their return, fill their stowage, which is more than is required for furs, with wool, hides, and tallow for the English market. But as such a use of the Company's capital, not being within its charter, would be illegal, a sub-company has been formed, called the Puget's Sound Company, consisting of members of the Hudson's Bay Company, and governed by its officers, but employing capital of their own.* Their principal farm is at Fort Nasqually, and they have a considerable one on Vancouver's Island, and others between the Straits of Fuca and the Columbia.

To the south of the Columbia, principally on the banks of the Willamet, some agricultural establishments have been formed by Americans. The nucleus is generally a missionary, who proposes to convert the Indians by civilisation, and for this purpose begins by using them as agricultural labourers. He is followed by men either misled by the misrepresentations of the climate and soil of Oregon, which, for party purposes, have been spread through the

* Wilkes, vol. iv. p. 307.

United States, or so unprovided with capital, as to think it worth while to undergo the dangers and toils of the journey, in order to obtain land for nothing. The principal is Oregon, which is thus described in the most recent information which has reached us :—'This place, Oregon city, is situated at the head of the navigation at the foot of Willamet Falls, one of the greatest water powers in the world. It contains twelve dwelling-houses, three stores, one blacksmith's shop, two saw-mills, and a grist mill.' * The American establishments are not supposed to have yet succeeded as sources of net profit, though they have afforded to the inhabitants the means of existence. Captain Wilkes states, that in 1842 and 1843 prices were merely nominal, and the settlers' horses were fed with their finest wheats.†

It is, we repeat, as a hunting-ground that Oregon is valuable; and, as applicable to this purpose, the merits of the northern and southern portions are reversed. The districts to the north of the Straits of Fuca, which are generally unfit for agriculture and pasturage, still continue to afford a considerable supply of furred animals. Those to the south, which contain some spots fit for settlement, have been almost exhausted as hunting-grounds.

In a letter from Mr. Pelly, the governor, to Lord Glenelg, previous to the grant of the Charter of 1838, he states, that nearly their whole profits are drawn from their

* See Mr. Perry's letter, dated Oregon city, March 30, 1843, in Simmonds' Colonial Magazine, vol. i. p. 101.

† Vol. iv. p. 308.

own proper territory; their other trade showing in some years a trifling loss, and in others a small gain.* Mr. Wyeth, who had been himself a fur-trader, believes that trade to be less profitable than any other in which as much danger of life and property is incurred; and he adds, that he has good evidence that in 1833 the profits of the western department of the Company, which includes Oregon, did not exceed $10,000, or less than 2,500*l.*† This confirms Mr. Pelly.

The fur trade, as we have already said, is naturally a decreasing trade. If it was bad in 1837, it is not likely to be better now. And this is supported by the testimony of Captain Wilkes, who visited Oregon in 1840.

Many persons (says Captain Wilkes, writing from Fort Vancouver) imagine that large gain must result from the Indian trade; but this is seldom the case—the Indians understand well the worth of each article. The Company are obliged to make advances to all their trappers, and from such a reckless set there is little certainty of getting returns even if the trapper have it in his power. All the profits of the Company depend on economical arrangements; for the quantity of peltry in this section of the country, and indeed the fur trade on this side of the mountains, has fallen off fifty per cent. in the last few years. It is indeed reported that this business is at present hardly worth pursuing.‡

This is confirmed by a statement, which we have now before us, of the Company's whole importations for 1844, and of their importations from the Columbia (which includes the whole Oregon territory) in 1845. In 1844,

* Hudson's Bay Company Correspondence. House of Commons' Paper. 1842, No. 547, pp. 26, 27.

† Territory of Oregon Report, p. 13.

‡ Vol. iv. p. 333.

they imported from the whole of their North American territories and hunting-grounds 433,398 skins, of the value of 173,936*l.* 17*s.*; of which Oregon furnished only 61,365 skins, valued at only 43,571*l.* In 1845, their importation from Oregon has been only 57,628 skins, valued at 56,749*l.* 14*s.* We have also before us a return of the number of persons in their employ in North America for the year ending June 1, 1844. It is 1,212. There are many single manufacturing establishments in England—such as the Great Western cotton factory in Bristol, or Mr. Marshall's in Leeds—which keep in activity a much larger capital, employ a much greater number of persons, and give a much larger annual produce than can be predicated of a company which is the actual proprietor of territories larger than the British islands, and has the exclusive use of a region greater than the whole of Europe.

But though the Company, as far at least as this portion of their trade is concerned, have been unsuccessful merchants, they have been wise and benevolent administrators. 'In all the countries,' says Mr. Wyeth, 'where the Hudson's Bay Company have exclusive control, they are at peace with the Indians, and the Indians are at peace among themselves.' *

An opinion has gone abroad (says Captain Wilkes) that at this post (Vancouver) there is a disregard of morality and religion. As far as my observations went, I feel myself obliged to state that everything seems to prove the contrary. I have reason to believe,

* Territory of Oregon Report, p. 14.

from the discipline and the example of the superiors, that the whole establishment is a pattern of good order and correct deportment. This remark not only extends to this establishment, but as far as our opportunities went (and all but two of their posts were visited) the same good order prevails throughout the country. Wherever the operations of the Company extend, they have opened the way to future emigration, provided the means necessary for the success of emigrants, and rendered its peaceful occupation an easy and cheap task.*

And yet, even under these favourable circumstances, though spirits are refused, wars are discouraged, and profligate intercourse is prevented, the proximity of the white men still exercises, and apparently with little diminution of intensity, its destructive influence on the red men. They are attacked by new diseases, and their old ones seem to be aggravated.

During my stay at Vancouver (says Captain Wilkes) I frequently saw Casenove, the chief of the Klackatack tribe. He was once lord of all this domain. His village was situated about six miles below Vancouver, on the north side of the river, and within the last fifteen years was quite populous; he then could muster four or five hundred warriors; but disease has swept off the whole tribe; it is said that they all died within three weeks. He now stands alone, his land, tribe, and property all departed, and he left on the bounty of the Company. Casenove is about fifty years of age, a noble and intelligent-looking Indian. I could not but feel for the situation of one who, in the short space of a few weeks, lost not only his property and importance, but his whole tribe and kindred, as I saw him quietly enter the apartment, wrapped in his blanket, and take his seat at the lonely side-table. He scarce seemed to attract the notice of anyone, but ate his meal in silence

* Vol. iv. p. 332.

and retired. He has always been a great friend to the whites, and during the time of his prosperity was ever ready to search out, and bring to punishment, all those who committed depredations on strangers. Casenove's tribe is not the only one that has suffered in this way; many others have been swept off entirely, without leaving a single survivor.*

It seems probable that in a few years all that formerly gave life to the country, both the hunter and his prey, will become extinct; and that their place will be supplied by a thin white and half-breed population, scattered along the few fertile valleys, supported by pasture instead of by the chase; and gradually degenerating into the barbarism, far more offensive than that of the savage, which degrades the backwoodsman.

Having given this short view of the Oregon country, we proceed to examine the grounds on which the very doubtful advantage of its sovereignty is claimed.

It will appear that the facts on each side are tolerably clear; the difficulty, therefore, if there be any, must arise from the obscurity of the law; and we will begin, therefore, by a brief statement of what we believe to be International Law, with respect to the acquisition of sovereignty over an unoccupied territory.

Generally, it may be said, that such sovereignty can be acquired by five means. By *Discovery*, by *Settlement*, by *Contiguity*, by *Treaty*, and by *Prescription*. There is one requisite, however, which, as it is essential to every source of title, ought to be mentioned before we treat

* Vol. iv. p. 369.

them separately—namely, that the acts by which sovereignty is acquired must be the acts of a government, not of unauthorised individuals. The acquisition of sovereignty is a grave act. It imposes on the acquiring state the duties of administration and protection. It imposes on all other states the duty of abstaining from interferences. It takes from the common patrimony of mankind a part which was previously open to the enterprise and industry of all nations, and appropriates it to one. It is obvious that great inconveniences would arise if private persons could arbitrarily impose such duties on their own sovereigns and on independent states. No title, therefore, is given by the discoveries made by private adventurers. If they make settlements, such settlements form no portion of the territory of the state from which the unauthorised settlers have proceeded. If they enter into treaties, such treaties give them no right either against their own government or against any other.

We now proceed to consider the different sources of title separately, beginning with title by *Discovery*. What amount of exploration is necessary to title by discovery has not been decided. As far as we can perceive, a very little, perhaps the mere distant glimpse of a headland, has been considered sufficient. And it is admitted that when once a title by discovery, however imperfect, has been gained by the agents of one nation, it is not superseded by a subsequent though more accurate examination by those of another. The reason is obvious; for if title by discovery depended on the comparative accuracy of the ex-

amination, no such title could be safe. It would always be liable to be divested by a new survey, which was, or professed to be, more elaborate.

The title by mere discovery, however, is not a permanent one. It requires to be perfected by *Settlement.*

The title (says Vattel) of navigators going on voyages of discovery, *and furnished with a commission from their sovereign*, has generally been respected, provided it has been soon after followed by a real possession. But the law of nations will not acknowledge the sovereignty of a nation over countries, except those in which it has formed settlements, and of which it makes actual use.*

No nations have asserted this more strongly than England and the United States.

She understood not (said Elizabeth to Mendoza, the Spanish ambassador) why her subjects or those of any other prince should be debarred from the Indies, to which she could not persuade herself that the Spaniards had any just title by the Bishop of Rome's donation; or because they had touched here and there on the coasts, built cottages, and given names to a river and cape, things which cannot entitle them to a propriety. This imaginary propriety could not hinder other princes from transporting colonies into those parts thereof where the Spaniards inhabit not, forasmuch as prescription without possession is little worth.†

Prior discovery (said Mr. Gallatin, in the American counter-statement during the negotiations of 1826) gives a right to occupy, provided that occupancy take place within a reasonable time, and is followed by permanent settlements and by the cultivation of the soil.‡

The same rules of convenience which decide that a title by discovery may be lost unless perfected by settlement, decide that a title by settlement may be lost if that

* Book I. cap. xviii. † Campden's *Elizabeth*, year 1580.

‡ 20th Congress, 5th Session, Document 199, pp. 63–69.

settlement be abandoned. Otherwise one nation, without herself using a territory, would exclude all others by settling, and afterwards quitting it.

We now come to the third source of title—*Contiguity.* It may be divided into a perfect and an imperfect right.

A perfect right by contiguity is the right which a nation enjoys to exclude all others from a territory, the command of which, though it be not actually within her occupation, is essential to the convenience or to the security of her real possessions. If no such right were recognised—if, when one nation has made a settlement, every other had a right to form one in its immediate vicinity, it is obvious that no continuous colonial establishments could be created. But the extent of this right has never been decided. One of the latest instances of its exercise is the refusal by England to allow any other nation to colonise the Chatham islands. We discovered those islands in 1774; but as we have never attempted to occupy them, our right by discovery has, according to our own doctrine, long since expired. But we maintain that their occupation by any other nation would be dangerous, or at least injurious, to our settlements in New Zealand, though at the distance of many hundred miles. And on that ground we maintain the right, though not occupying them ourselves, to prevent their occupation by others.

The other, the imperfect title by contiguity, is a mere preferable right to acquire by settlement a complete title to lands not actually settled, and not essential either to the safety or to the convenience of existing settlements, but

geographically connected with them. This title is even less defined than the former—still it must exist; for, if it do not exist, the title by discovery can give a right merely to the line of coast actually seen by the navigator. This was the title set up by Spain—but, to the extent to which she asserted it, denied by England—to the whole western coast of America. This is the ground of our claim to the unoccupied portion of New Holland. That claim does not rest on discovery, or on settlement, or on treaty, or on prescription. It must then depend on contiguity. But it cannot be said that our existing settlements would be injured by the formation of others at 1,000 miles' distance. The contiguity, therefore, on which our claim rests, is mere geographical connection; and we apprehend, therefore, that it is a mere preferable right—that it gives us merely a right of first choice—a right, for instance, to require that no nation shall colonise the coast of New Holland without announcing to us her intention, and ascertaining that her projects are not a bonâ fide interference with any of ours. But by analogy to the imperfect title by discovery, the imperfect title by contiguity gives no permanent exclusive claim. Any nation has a right to say to us—Either colonise yourselves, or let us do it. But do not exclude others from territory which you do not use yourselves, and which we can use without injuring you.

A title by *Treaty* is of course a perfect title from the beginning as between the parties to the treaty; but, as respects all others, it is mere evidence of claim. Thus the treaty by which Russia has acknowledged that the

British northern boundary begins at latitude 54° 40′, is not binding on the United States. The treaty by which the United States and Spain have fixed the forty-second parallel as the northern boundary of Mexico, is not binding on England. It is to be observed also that, as between civilised nations, no title derived by treaty from a barbarous people is acknowledged. Savage tribes are held to have a mere right of occupancy, to last only until the land is required by civilised men; and incapable of transfer, except to the government, which, by some of the means recognised by international law, has acquired the real sovereignty over what the savage erroneously supposes to be his own territory. It is generally thought advisable to go through the forms of a purchase and a cession; but it is universally admitted that the title of a civilised nation as against other civilised nations is not strengthened by these forms, or weakened by their absence.

Prescription, the last of the five sources of title, is seldom found alone. The only case in which it can exist by itself, is one in which the rest of the world has for a long series of years allowed a single nation to exclude all others from a territory to which she has no perfect title by occupation, contiguity, or treaty. Of such a claim the United States endeavoured to lay the foundation by President Munroe's declaration of December 2, 1823—that the American continent was no longer to be considered as a subject of colonisation by any European power. Had Europe acquiesced in this declaration, instead of protesting against it, it would in time have given to the United

States a prescriptive right to act upon it. So if England were now to make a similar declaration respecting New Holland, and it were followed by no opposition or remonstrance, England would in time acquire a prescriptive right to enforce it.

Having explained, as fully as our limits, and the incompleteness of the authorities, will allow, the Law of Nations on this obscure subject, we proceed to examine what countenance that law gives to the claims of England and of the United States on Oregon. We will begin with the title by *Discovery*.

It has been supposed that Drake may have caught a glimpse of the coast in latitude 48° in the year 1580. He certainly saw it up to latitude 43°. Of the two accounts of his voyage one carries him up to latitude 48°—the other stops him at 43°. But as England never attempted to make any use of this supposed discovery, she has very properly avoided insisting on it. For nearly two centuries the north-western coast remained unvisited; but, in 1774 and 1775, Bucareli, the viceroy of Mexico, who appears to have been a man of vigour unusual in a Spaniard, sent two expeditions to explore it. We copy from Humboldt, who had access to manuscript documents, the following statement of their proceedings:—

Perez and his pilot, Estevan Martinez, left the port of San Blas on January 24, 1774. On August 9 they anchored, the first of all European navigators, in Nootka Road, which they called the port of San Lorenzo, and which the illustrious Cook, four years afterwards, called King George's Sound. In the following year a second expedition set out from San Blas, under the

command of Heceta, Ayala, and Quadra. Heceta discovered the mouth of the Rio Columbia, called it the Entrada de Heceta, the Pic of San Jacinto (Mount Edgecumbe), near Norfolk Bay, and the fine port of Bucareli. I possess two very curious small maps, engraved in 1788 in the city of Mexico, which give the bearings of the coast from the 27° to the 58° of latitude, as they were discovered in the expedition of Quadra.*

Mr. Greenhow states that, in the charts published in Mexico after Heceta's return, the Columbia is named the Rio de San Roque. In 1778 Captain Cook, on his last voyage, partially examined the coast from the forty-fourth parallel to the fifty-ninth, and accurately from thence to within the arctic circle. When his ships were returning after his death, they visited Canton, and sold very advantageously some furs which they had collected from the savages. This traffic produced important results. A mine of wealth was supposed to have been discovered in the fur trade between the north-west of America and China, and the English and Americans prepared to work it; but as the South Sea Company had then exclusive privileges in the Southern Pacific, and the East India Company in China, the English adventurers generally sailed under foreign flags. The most remarkable of these traders were Captain Gray, the commander of the American merchant vessel the Columbia, and Lieutenant Meares, a British officer, who acted as the virtual commander of a mercantile expedition using the Portuguese flag.

Meares left Macao for Nootka Sound in the beginning

* Humboldt's *New Spain* (Black's translation), vol. ii. pp. 316–318.

of 1788—erected a hut and a kind of building-yard there, built a vessel, and traded along the coast. He searched for the river St. Roque, and actually entered its mouth; but mistaking, as all previous navigators except Heceta had done, its bar for a continuous coast, he inferred that no such river existed. He therefore named the northern headland Cape Disappointment—a name which it still bears.

In 1787, and the five following years, Captain Gray passed and repassed along the coast, generally wintering in Nootka Sound. On June 11, 1792, being in search of a harbour to do some repairs, he ran into the Entrada de Heceta—saw an opening in the bar, crossed it, and found himself in the river St. Roque. He sailed up for fifteen miles, took in water, and completed his repairs; and then with much difficulty got back over the bar into the Pacific. He changed the name of this river from that of St. Roque to that which it still bears, the Columbia.

In 1791, Captain Vancouver was despatched by the British government to the north-western coast, partly for purposes which we shall mention hereafter, and partly for discovery. He reached that coast at about latitude 40°, and from thence, up to the northern shores of the Pacific, made a survey far more accurate than any that had previously been effected. But, as usual, he mistook the bar of the Columbia for a continuous coast, and was undeceived only by meeting Captain Gray. Still he supposed that it must be impassable, as in truth it generally is, by vessels of burden. Instead, therefore, of exploring it with

his own ship, the Discovery, he despatched Lieutenant Broughton in a smaller vessel, the Chatham. Broughton crossed the bar; but, finding the channel intricate and dangerous, left his ship, and rowed up in his cutter about 100 miles—that is, nearly to the point at which the rapids render further progress, under ordinary circumstances, impossible.

The progress of overland discovery was much slower. The first who penetrated the Rocky Mountains was Sir Alexander Mackenzie, then in the service of the North-West Company. In the year 1793 he crossed them in about latitude 54°, discovered Fraser's River, descended it for about 250 miles, then struck off in a westerly direction, and reached the Pacific in latitude 52° 20′. In August 1805, Lewis and Clarke, despatched for that purpose by the government of the United States, reached the Rocky Mountains in about latitude 44°—crossed them, discovered the southern head-waters of the Columbia, floated down its stream for about 600 miles, and on November 15 reached its mouth. Here they built some huts, remained in them during the winter, and in 1806 returned to the United States, exploring in their course many of the tributaries of the Columbia. This is the only occasion on which the Rocky Mountains have been crossed by persons acting in a public capacity.

In 1806 Mr. Fraser, also under the orders of the North-West Company, crossed the Rocky Mountains, and established a trading post on Fraser's River, about latitude 54°, and in 1811 Mr. Thompson, also an agent of that Com-

pany, discovered the northern head-waters of the Columbia about latitude 52°, and erected some huts on its banks. This is the whole amount of the title by *Discovery.*

On these grounds, that title has been claimed by the United States, by England, and by Spain.

The claim to that title, on the part of the United States, depends on the discoveries by Gray, and by Lewis and Clarke. They have chiefly rested on that by Gray; and, in virtue of it, claim the sovereignty over all the countries drained by the Columbia—that is, the whole territory from about latitude 42° to 52°—it being, according to the doctrine of the American statesmen who conducted the negotiations of 1824 and 1826, an established international law, that a nation which discovers the mouth of a river entitles itself to all the territory drained by that river—that is to say, that if Europe had been the unoccupied, and America the discovering country, the discovery of the mouth of the Danube would have given to the discoverers the sovereignty of Wurtemburg and Baden. It is scarcely necessary to tell European readers, or even American *lawyers,* that no such absurd rule exists. When Mr. Rush and afterwards Mr. Gallatin, the American negotiators, were asked for their authorities, they merely referred to the grants made by European sovereigns of the territories watered by certain rivers—words of description, convenient enough for the demarcation of unknown lands, but no more establishing the law in question than grant after grant, describing its subject as bounded by a range of mountains,

would prove it to be a rule of international law, that the nation which first sees a mountain-range is entitled to all the lands which that range intersects. Another fatal objection to any claim founded on Gray's discovery is the really recognised international law, that the discoveries made by private individuals give no title to their nation. They prevent, indeed, any other nation from acquiring a title by discovery, but confer none themselves.

A third objection is, that Gray was not the discoverer of the Columbia. It was first seen by Heceta, named by him the San Roque, and by that name laid down in maps. If Gray, by entering it, and sailing up for fifteen miles, superseded Heceta, Broughton again superseded Gray by exploring it for more than eighty miles farther. If it were true that prior imperfect discoveries are superseded by subsequent and more accurate ones, the title by discovery to the whole coast of Oregon belongs to Vancouver; for he was the first who accurately examined it. Lewis and Clarke were, indeed, public officers; but their discovery of the southern sources of the Columbia could give no title to the territory watered by a river of which the lower portion was already well known, and the northern sources were discovered by others.

The English claim by discovery is equally unfounded. Her overland discoverers were not public officers; and of her maritime discoverers, it is doubtful whether Drake ever ascended beyond the forty-third parallel; and Cook and Vancouver did not see the coast until it had been surveyed and mapped by Heceta. There remains the

title of Spain; and, as far as mere discovery goes, it is complete. The voyages of Perez and Heceta possessed every requisite. They were exploring expeditions made by government ships, and for government purposes, and they were sufficiently minute to enable the coast to be mapped.

But we have already seen that settlement is essential to the completion of a title by discovery, and is in itself an independent source of title.

We proceed, therefore, to enquire what title has been acquired to Oregon by *Settlement*. The first white men who appear to have shown an intention to fix themselves in any part of that country were Meares and his companions in 1788. Their continued residence at Nootka Sound raised the jealousy of the viceroy of Mexico. He despatched Martinez with three armed vessels to dispossess the intruders. Martinez arrived on May 6, 1789, at Nootka Sound, erected a fort there, and soon after seized Meares's vessels, and sent some of his men towards Europe in Captain Gray's ship, the Columbia, and the rest to San Blas as prisoners.

The result was remarkable; each nation demanded satisfaction—Spain for Meares's intrusion into what she considered her territories—England for the mode in which Spain had taken the law against him into her own hands. Each armed, but after a waste of about three millions on our part, and one million on that of Spain, and probably a much greater loss occasioned to commerce by six months of uncertainty, the two governments came to their senses.

The past was remedied by an indemnity given by Spain to Meares, and the future provided for by the convention of the Escurial; or, as it is generally called, the Nootka Sound Convention of October 28, 1790.

By article *first* of that treaty, the buildings and tracts of land on the north-west coast of America, of which British subjects had been dispossessed, were to be restored.

Article *third* stipulates, that the respective subjects of England and Spain shall not be disturbed in navigating or fishing in the Pacific or in the South Seas, or in landing on the coast of those seas in places not already occupied, for the purpose of commerce with the natives, or of *making settlement there.*

By article *fourth*, British subjects are not to navigate or fish within ten sea leagues from any part of the coast already occupied by Spain.

By article *fifth*, in all places on the north-western coast to the north of the parts of that coast already occupied by Spain—that is, to the north of San Francisco, in latitude 38°—wherever the subjects of either nation shall hereafter make settlements, the subjects of the other are to have free access.

Captain Vancouver was despatched by the British government to receive the surrender of the tracts of land mentioned in the first article. On his arrival at Nootka Sound, however, no such tracts of land were identified. A hut was offered, which he refused. He left Nootka Sound in the possession of the Spaniards; and there is considerable doubt whether any lands were ever restored

to Meares, or whether there were any to restore. All that we know is, that in 1795 all parties, Spaniards and English, had abandoned Nootka Sound, and it has not been reoccupied.

During his voyage Vancouver, we trust without instructions, was guilty of an assumption of sovereignty more ridiculous than even the average absurdity of such transactions.

He first took possession in the name of England of all the country from latitude 39° 20′ to the Straits of Fuca, and afterwards from the Straits of Fuca to the fifty-ninth parallel —that is to say, the treaty—to superintend the execution of which he was despatched, having stipulated that the whole coast should be open to settlement by England and by Spain, he took exclusive possession of nearly the whole of it on the part of England.

We are glad to think that no British negotiator has relied on this assertion of claim. Indeed, the northern part of the territory comprised in it is now under the undisputed sovereignty of Russia, and the southern under that of Mexico.

The next important attempt at settlement was made by Mr. Astor, an American. He despatched an expedition by sea and by land, which met near the mouth of the Columbia, and in 1811 erected on its south bank the little fort which he named Astoria, intended to be the centre of an extensive trade between America and China. Nearly the same events followed as had occurred at Nootka Sound. In the course of the war between England and America,

which broke out in the next year, Astoria was taken by a British force, the British standard hoisted, and the name changed to Fort George. *This is the only case in which any part of the Oregon territory has been occupied by any person under the authority of the British government.* The treaty of Ghent, which terminated that war, provided for the restoration of all possessions taken by either party from the other during the war. In obedience to this stipulation, Fort George was, on October 6, 1818, restored to an agent appointed by the American government. The British flag was struck, and the American hoisted. *This, again, is the only case in which any person authorised by the government of the United States has occupied any part of Oregon.* But that occupation was as brief as the occupation of Nootka Sound. Astoria has been abandoned as a settlement, and is now reduced to a mere log-house, in which a clerk of the Hudson's Bay Company resides, for the purpose of communication between Vancouver and the mouth of the Columbia.

It follows from this statement that, up to the year 1818, no civilised nation had acquired the sovereignty over any part of Oregon. Spain was entitled by discovery, but did not perfect that title by permanent settlement; and the settlements, if mere trading posts can be called settlements, made by English or American subjects, were unauthorised by their respective governments.

The resumption of Nootka Sound by England, and of Astoria by America, were indeed official executive acts; but each of these posts has been abandoned.

Since that time, however, some pastoral and agricultural establishments have, as we have seen, been formed.

But on two distinct grounds these settlements give no title to the sovereignty of the soil. First, because they have been merely the unauthorised acts of individuals. With respect to the British settlements, this is obvious from the statement which we have already given of the words of the Hudson's Bay Company's charter. And with respect to the American settlements, the United States have not done a single act authorising their people to acquire lands beyond the Rocky Mountains. Those who have done so are mere squatters, like the squatters in Texas. And, secondly, because the convention of 1818, to which we shall immediately proceed, and which has never ceased to operate, stipulates that during its continuance the country westward of the Rocky Mountains shall be open to the subjects of both powers; 'it being understood,' continues the treaty, 'that this agreement is not to be construed to the prejudice of any claim of either party to any part of the country.' It is obvious that the right of sovereignty being expressly left in abeyance, no act done by either party, during the continuance of the treaty, can affect the right of the other.

We now proceed to consider the *Treaties* affecting Oregon. We have already stated the material parts of the Nootka Sound Convention. Between the conclusion of that convention in 1790, and the restoration of Astoria in 1818, important events had occurred in the countries bordering on Oregon. Russia had created a fur company,

authorised to settle and bring under the Russian sovereignty any portion of America unoccupied by a civilised power. The Company scattered their posts through the Aleutian islands, and along the north coast of the Pacific—fixed their head-quarters at Sitca, near the fifty-sixth parallel, claimed all that coast as Russian territory, and were preparing to advance towards the south. The United States, by the purchase of Louisiana, extended their western frontier to the Rocky Mountains. Oregon, therefore, became contiguous to four great empires—to Russia on the north, to England and America on the west, and to Spain on the south.

Several questions were open between England and the United States in 1818. One was that of fisheries. The treaty of 1783 had given, or rather continued, to the people of the United States a general liberty to fish on the coasts of British America. America claimed the benefit of this stipulation as a permanent arrangement; or, to use the odd expression of jurists, a transitory convention. England maintained that it had ceased by the war of 1812. A question also existed as to the northern boundary line of the United States. These points were settled by the convention of October 20, 1818. The liberty of fishing was confined within certain limits; the forty-ninth parallel was declared to divide the British and American territories, from the Lake of the Woods to the Rocky Mountains. The American negotiators, Rush and Gallatin, proposed to continue that parallel as the boundary line down to the Pacific. This was refused by

the British commissioners, Robinson and Goulburn, and the Columbia suggested in its place. The very undue importance attached at that time to the Columbia probably was the circumstance which prevented an agreement. As the best expedient, the precedent of the Nootka Sound Convention was followed; and, as we have already stated, the use of the country was declared to be open to both parties for ten years—the sovereignty remaining in abeyance. On February 22, 1819, Spain and the United States, by the Florida treaty, recognised the forty-second parallel as their mutual boundary, from the source of the Arkansas, on the eastern side of the Rocky Mountains, down to the Pacific; and Spain ceded to the United States all her claims to any territories north of that line. Spain, however, having lost by non-user the rights which she had acquired by discovery, had no claims to cede; except such as she was entitled to either by mere contiguity, or, as against England, by the Nootka Sound Convention. In 1824 and 1825, the claims of Russia were satisfied by a treaty with the United States, which stipulates that the Russians shall confine their settlements to the north of latitude 54° 40′, and by a treaty with England, by which a line beginning at 54° 40′, is fixed as the boundary between the Russian and British dominions.

These treaties, of course, affected only the four nations who were parties to them. As to those nations, the effect was to exclude Russia and Spain, and to prevent England and America from acquiring any title by settlement as against one another. To the rest of the world Oregon

remains open; and, unfit as it is by situation, soil, and climate, for profitable settlement, it is probable that it will long continue open.

Of the five sources of title, we have now gone through three—*discovery*, *settlement*, and *treaty*; and we have shown that under no one of them has a title to any portion of Oregon been acquired by any civilised nation. There remain two others, *prescription* and *contiguity*. Prescription obviously does not apply to a country which was not discovered till the end of the last century. There remains, therefore, only contiguity; and this claim is confined to England and the United States—Spain and Russia, the other contiguous states, having taken their shares and retired. But neither England nor America can claim a perfect title by contiguity. Neither of them has a settlement within 2,000 miles of the Rocky Mountains. Neither of them can maintain that the occupation of the country to the west of those mountains is necessary to the security, or would even add to the convenience, of her territories to the east of them—accessible as they are only by a land journey of between 3,000 and 4,000 miles, or a voyage of eight months. But an imperfect title by contiguity—a title depending merely on geographical connection—each certainly has to the portion of the country which adjoins its own frontier; that is to say, England to the portion north of the forty-ninth parallel, and America to that south. This is, without doubt, the weakest of all titles; so weak, that when expressed in words it seems almost to disappear; for what can be less substantial than

a claim to territory which is not yours, merely because it is bounded by that which is? Still, it must be admitted to be a source of title, however slight, where there is no other. And this is a case in point.

The arrangements for joint occupation made by England, first with Spain, and afterwards with the United States, were plausible expedients for the suspension of immediate disputes, but could not have been practically acted on. Under such an arrangement, the sovereignty being in abeyance, there is no *lex loci* unless it be the law of the aborigines. The Hudson's Bay Company and the Canadian Courts have, under an act of the British parliament, power over British subjects, but over British subjects only. If an American murder an Englishman under the lines of Fort Vancouver, he cannot be legally punished. The British law cannot touch an American; the American law cannot take cognisance of a crime committed against a foreigner beyond the sovereignty of the states. The only resource seems to be to hand him over to Casenove, to be disposed of according to Klackatack law. Joint settlement of the country by two independent nations, without common tribunals or a common superior, would be obviously impossible. Indeed, joint occupation is impossible even for mere hunting and trading purposes. We have seen that in the Indian fur trade the competition of white men, even though belonging to the same nation and governed by the same laws, is destructive to the Indians, to the furred animals, and to the success of both parties. The Hudson's Bay Company have acted, and continue to act,

on this principle. They hold no trade to be worth having which is shared. British rivals they exclude by law; Russian and American by reckless competition. Nothing can be kinder than their conduct to their competitors as men. They protect them, they clothe them, they feed them; but as traders they crush them. If an American post is established, a Hudson's Bay post instantly rises in its neighbourhood. If an American vessel trades along the coast, a Company's ship follows in her wake. If an American offers goods for barter, the Company, whatever be the loss, undersells him. 'We have compelled,' says Mr. Pelly in 1838, 'the American adventurers one by one to withdraw from the contest, and are now pressing the Russian Fur Company so closely, that we hope, at no very distant period, to confine them to the trade of their own proper territory.'*

The great error of all parties has been the importance attached to Oregon. But, assuming it to be of any value, the Americans cannot be expected to rest satisfied with an arrangement which, professing to give them equal rights, practically excludes them. We have seen that in 1818 they proposed a partition. They again proposed one in 1824; but as the terms offered by each party were a mere repetition of those of 1818—namely, on the part of England the Columbia as a boundary, and on the part of America the forty-ninth parallel—the second negotiation was as fruitless as the first had been. Another attempt

* Letter to Lord Glenelg, House of Commons Paper, 1842. No. 547.

was made in 1826. The American minister, Mr. Gallatin, now offered a slight modification. He proposed that the forty-ninth parallel should be adopted merely as a basis, subject to deviation according to the accidents of the country; and, further, that if that line should cross any navigable tributaries of the Columbia, the navigation of such tributaries, and also of the Columbia, should be open to British subjects. The British negotiators, Messrs. Huskisson and Addington, adhering to the Columbia as the general boundary, offered to America a detached peninsula, bounded on the south by a line to be drawn from Hood's inlet to Bullfinch harbour, giving excellent harbours and the southern coast of the Straits of Fuca; and, further, that a strip along the north bank of the Columbia should be neutral, and unoccupied by either nation. Neither proposal was accepted, and the result was an indefinite prolongation of the convention of 1818, terminable at the option of either party on twelve months' notice.

As this was the last negotiation of which the papers are printed, it may be worth while to show the position taken by each party. It is contained in the British statement annexed to the protocol of the sixth conference; and in the American counter-statement annexed to the protocol of the seventh conference.*

The British negotiators disclaimed all right to exclusive sovereignty over any part of Oregon. But they maintained that no other power had acquired such a right; and

* 20th Congress, 1st Session, Document No. 199, pp. 50–60.

therefore that the whole country must be open to settlement by any nation, and, among the rest, by Great Britain. They then refuted by argument which we need not reproduce (for we have already stated their substance), the exclusive pretensions of America. And they concluded by declaring the determination of Great Britain to maintain her qualified rights under the Nootka Sound Convention, until a fair partition shall have been effected.

The only parts of Mr. Gallatin's answer which we need notice are as follow:—He maintained that the Columbia was first discovered by the United States—that this discovery was followed by an actual settlement made by Mr. Astor within a reasonable time—and that this discovery and settlement give a right to the whole country drained by the Columbia, and by its tributary streams;—that is, to the whole territory between the fifty-second and forty-second parallels. He contended that the Nootka Sound Convention was purely commercial—that the settlements which it authorised were trading posts, not colonies, since colonies imply exclusive sovereignty—and that it terminated by the war of 1796. He affirmed that America, having purchased for a valuable consideration the rights of Spain, had acquired a double title, and therefore was entitled to a double share; whereas the British proposal offered her only one-third. He contended that title by contiguity must have reference to the magnitude and population of the settlement in respect of which it is claimed, and the facilities and probabilities of actual occupation; and he urged that, on comparing the comparative

population and rate of increase of the United States and of British America, it must be evident that it is from the United States, not from Canada, that the future population of Oregon will proceed.

It is strange that a man of Mr. Gallatin's ability should have relied on the settlement made by Mr. Astor. Omitting, for the present, the fatal objection that it was a private, not a government enterprise, it was a mere attempt to form a trading post. And in the very paper which we are considering, Mr. Gallatin affirms, with reason, that mere factories established for the purpose of traffic, and not followed by actual cultivation, give no title. And, lastly, it was abandoned by its creator, and is now a ruinous log-house. That the erection of a stockade by private traders, and its retention for a few months, can give, thirty years after it has been abandoned, the sovereignty of a country nearly twice as large as France, is a position which no statesman educated on this side of the Atlantic will seriously maintain. The construction of the Nootka Sound Convention is not free from doubt. It certainly resembles the provisions of the treaty of 1783 respecting the right of fishing, which, according to the English negotiators, was annulled by the war of 1812; and, according to the Americans, was a permanent arrangement. The convention of 1827, however, seems to have made this discussion unimportant. By that convention, either party may terminate the present arrangement on twelve months' notice. But as that arrangement, and the Nootka Sound arrangement, are substantially the same, the power to terminate

the one necessarily implies a power to terminate the other.

The claim, founded on purchase from Spain was sophistical. The disputed territory—the territory to which the Nootka Sound Convention applied—began in latitude 38°. By the Florida treaty, America ceded to Spain the part of it which lies between that parallel and 42°. But as the ceded portion belonged just as much to England as it did to America, to found on this cession a title against England was altogether childish. But we admit that there is a foundation for the premise, that title by contiguity is affected by the importance of the settlement in respect of which it is claimed. And we firmly believe in Mr. Gallatin's prophecy, that 'under whatever nominal sovereignty Oregon may be placed, whatever its ultimate destinies may be, it will be almost exclusively peopled by the surplus population of the United States.

The negotiation for partition is now resumed, and we trust with a fair prospect of success. It is much that the real worthlessness of the country has been established. All that any prudent Englishman or American can wish is, that the controversy should be speedily and honourably settled. A week's interruption of confidence—such, for instance, as followed the reception of Mr. Polk's inaugural speech—costs each party twenty times the value of the matter in dispute.

The obvious course is to refer the whole question to arbitration. The decision of an arbitrator necessarily saves the honour of each party; and in the present case there is

nothing else to contend for. We have heard that America objects to arbitration, and that her objection is founded on her conviction that the right is on her side. But as there are few disputes in which each party is not convinced that he is in the right, it follows that, if such a conviction were a bar to arbitration, that mode of adjustment could scarcely ever take place. Assuming the honesty and intelligence of the proposed arbitrator, the only valid objection to arbitration is the conviction, not merely that we are in the right, but that the opposite party knows that we are in the right. If we believe this, we believe his claim to be fraudulent and vexatious; and we are justified, if the object in itself, or as affecting our honour, be adequate, in refusing to allow the question to be discussed. England would not allow her title to Quebec, or America her title to Rhode Island, to be the subject of an arbitration—not merely because each nation is convinced of the validity of her own title, but because each knows that its validity is known to the other. In the present case, America, with that ignorance of international law which is the glaring defect of American statesmen, may possibly be convinced that her claim to the whole of Oregon is valid; but she cannot believe that England knows it to be valid. She cannot deny that we honestly believe it to be matter of controversy; and if a fourth negotiation should fail, she is bound by friendship, by prudence, and by regard to the welfare of the whole civilised world, to allow it to be settled by arbitration.

Our readers have perhaps a right to ask what, in our

opinion, the decision of an honest arbitrator would be? We think that we have supplied premises from which it may be inferred. We have shown that no nation now possesses any title, perfect or imperfect, by discovery, by settlement, by treaty, or by prescription. We have shown, too, that no nation possesses a perfect title by contiguity; and we have shown that an imperfect title by contiguity to the portion which lies north of the forty-ninth parallel, is vested in England—and to that part which lies south of that parallel in America. We think, therefore, that that parallel ought to be the basis of the boundary; but as, if prolonged indefinitely, it would cut off the southern extremity of Vancouver's Island, with little advantage to America, and great injury, if we shall ever occupy that island, to England, we think that it should cease to be the boundary when it reaches the coast, and that from thence the boundary should be the sea. This would give to us the whole of Vancouver's Island, which, if we are absurd enough to plant a colony in the Northern Pacific, is the least objectionable seat. It possesses excellent ports, a tolerable climate, and some cultivable soil—an ascertained and defensible frontier—and the command of the important straits, by which, to the east and to the south, it is separated from the continent. That its distance from Europe would render it a costly unprofitable incumbrance is true; but that objection applies with equal force to every part of Oregon.*

* This was the arrangement ultimately adopted by both parties.

CHAPTER VI.

ENGLISH POOR LAWS.*

THE great experiment of poor law amendment, which has now for seven years been in progress among our southern neighbours, appears to us to have been insufficiently attended to, and therefore to have been imperfectly understood in this part of the island. We do not believe that many of our Scottish readers are fully aware of the origin of the English poor laws, of the changes which they underwent, of the abuses which they created, of the remedy which has been applied, or of the obstacles which have diminished the success of that great measure, and now threaten its efficiency. And yet these are subjects of the deepest interest, even to those who study legislation merely as a science. A series of laws are exhibited, persevered in for centuries, by a nation always eminent for practical wisdom, of which the result has almost invariably been failure, or worse than failure; which in scarcely a single instance have attained their objects, and in most cases have produced effects precisely opposite to the intentions of their framers—have

* From the Edinburgh Review of October 1841.

aggravated whatever they were intended to diminish, and produced whatever they were intended to prevent. From us, as Scotchmen, they merit peculiar attention, not only from the resemblance of our poor laws to the earlier English statutes, but from the probability that, as the connection between the two countries becomes more intimate, we shall at no distant period follow the example, whatever it may be, of the larger country to which we are united, and participate in the evils and the advantages of the system which she may finally adopt. This fate already threatens Ireland. It is scarcely probable that Scotland can avoid it.

Each of the subjects to which we have alluded would require a volume for its complete developement; but we are constrained to give to them such consideration as is admissible within the limits of an article of moderate length.

The Committee of the House of Commons which considered the poor laws in 1817, commence their able report by stating, that 'the principle of a compulsory provision for the impotent, and for setting to work the able-bodied, originated, without doubt, in motives of the purest humanity.' From this statement, plausible as it is, we utterly dissent. We believe that the English poor laws originated in selfishness, ignorance, and pride. Better motives, without doubt, though misdirected by almost equal ignorance, dictated the changes which were made in those laws during the eighteenth century—the fourth which elapsed from their commencement; but we are

convinced that their origin was an attempt substantially to restore the expiring system of slavery.

The evils of slavery are now understood; it is admitted that it destroys all the nobler virtues, both moral and intellectual; that it leaves the slave without energy, without truth, without honesty, without industry, without providence; in short, without any of the qualities which fit men to be respected, or even esteemed. But mischievous as slavery is, it has many plausible advantages, and freedom many apparent dangers. The subsistence of a slave is safe; he cannot suffer from insufficient wages, or from want of employment; he has not to save for sickness or old age; he has not to provide for his family; he cannot waste in drunkenness the wages by which they were to be supported; his idleness or dishonesty cannot reduce them to misery; they suffer neither from his faults nor his follies. We believe that there are few of our Highland parishes in which there is not more suffering from poverty than would be found in an equal Russian population. Again, the master thinks that he gains by being able to proportion the slave's subsistence to his wants. In a state of freedom, average wages are always enough to support, with more or less comfort, but still to support, an average family. The unmarried slave receives merely his own maintenance. A freeman makes a bargain; he asks whatever his master can afford to pay. The competition among employers forces them to submit to these terms; and the highly-paid workman often wastes his extra wages in idleness and debauchery. And when employment is

abundant, that is, when his services are most wanted, he often tries to better himself by quitting his master. All this is disagreeable to masters who have been accustomed to the apparent economy of servile labour, and to its lethargic obèdience.

The great motive of the framers of the earlier English poor laws was to remedy the latter class of inconveniences—those which affect, or appear to affect, the master. The motive of the framers of the later acts again, beginning with George I., was to remedy the first class of evils—those which affect the free labourer and his family.

The first set of laws were barbarous and unskillful, and their failure is evident from their constant re-enactment or amendment, with different provisions and severer penalties. The second set had a different fate—they ultimately succeeded, in many districts, in giving to the labourer and to his family the security of servitude. They succeeded in relieving him and those who, in a state of real freedom, would have been dependent on him, from many of the penalties imposed by nature on idleness, improvidence, and misconduct. And, by doing this, they in a great measure effected, though certainly against the intentions of the legislature, the object which had been vainly attempted by the earlier laws. They confined the labourer to his parish; they dictated to him who should be his master; and they proportioned his wages, not to his services, but to his wants. Before the Poor Law Amendment Act, nothing but the power of arbitrary punishment was wanting in the pauperised parishes to a complete system of prædial slavery.

Our limits will not allow us to do more than to state very briefly the material parts of the numerous statutes, beginning by the statute of labourers, 23rd Ed. III. (1349), and ending by the 39th Eliz. cap. 4 (1597), which were passed for the supposed benefit of masters.

The 23rd Ed. III. requires all servants to accept the wages which were usually given five or six years before, and to serve by the year, not by the day; it fixes a positive rate of wages in many employments; forbids persons to quit the places in which they had dwelt in the winter, and search employment elsewhere in summer; or to remove, in order to evade the act, from one county to another.

A few years afterwards, in 1360, the 34th Ed. III. confirmed the previous statute, and added to the penalties which it imposed on labourers or artificers absenting themselves from their services, that they should be branded on the forehead with the letter F. It imposed also a fine of 10*l.* on the mayor and bailiffs of a town which did not deliver up a labourer or artificer who had left his service.

Twenty-eight years after, in 1388, was passed the 12th Rich. II., which has generally been considered as the origin of the English poor laws. By that act the acts of Ed. III. are confirmed—labourers are prohibited, on pain of imprisonment, from quitting their residences in search of work, unless provided with testimonials stating the cause of their absence, and the time of their returning, to be issued by justices of the peace at their discretion. And, 'because labourers will not, nor, for a long season,

would not, serve without outrageous and excessive hire,' prices are fixed for their labour: and punishments are awarded against the labourer who receives more, and against the master who gives more. Persons who have been employed in husbandry until twelve years of age are prohibited from becoming artisans. Able-bodied beggars are to be treated as labourers wandering without passports. Impotent beggars are to remain where they are at the time of the proclamation of the act; or, if those places are unwilling or unable to support them, they are, within forty days, to repair to the places where they were born, and there dwell during their lives.

We have said that this act has been treated as the origin of the English poor laws. It has been so considered in consequence of the last clause, which is the first enactment recognising the existence of the impotent poor. But this enactment makes no provision for them; though, by requiring them to be stationary in a given spot for the rest of their lives, it seems to assume that they would be supported there. It gives them, however, no claim, nor is there a clause in the whole act intended to benefit any persons except the employers of labour, and principally of agricultural labour—that is to say, the landowners who made the law. If the provisions of the act could have been enforced, the agricultural labourers, and they formed probably four-fifths of the population of England, though nominally free, would have been as effectually *ascripti glebæ* as any Polish serf.

To make a nearer approximation to slavery, in the next

year (1389), the 13th Rich. II. was passed; which directs the justices of every county to make proclamation every half year, at their discretion, according to the price of food, what wages every artificer and labourer shall receive by the day. This act, with some intervals, during which the legislature attempted itself to fix the prices of labour, remained substantially in force until the present century.

A further attempt to reduce husbandry labourers to a hereditary caste of serfs, was made by the 7th Hen. IV. cap. 17 (1405), which, after reciting that the provisions of the former acts were evaded by persons apprenticing their children to crafts in towns—so that there is such a scarcity of husbandry labourers that *gentlemen* are impoverished—forbids persons not having 20*s.* a year in land to do so, under penalty of a year's imprisonment.

It appears, however, that the labourers did not readily submit to the villanage to which the law strove to reduce them; for from this time the English statute-book is deformed by the enactments against able-bodied persons leaving their homes, or refusing to work at the wages offered to them, or loitering (that is to say, professing to be out of work), which, to use the words of Dr. Burn, 'make this part of English history look like the history of the savages in America. Almost all severities have been inflicted, except scalping.' * A new class of criminals, designated by the terms 'sturdy rogues' and 'vagabonds,' was created. Among these were included idle and suspect

* History of the Poor Laws, p. 120.

persons, living suspiciously.* Persons having no land or craft whereby they get their living.† Idle persons calling themselves serving-men, having no masters. Persons who, after having been sent home, absent themselves from such labour as they shall be appointed to.‡ Able-bodied poor persons who do not apply themselves to some honest labour or other; or serve even for meat and drink, if nothing more is to be obtained.§ Persons able to labour, not having land or master, nor using any lawful employment. Labourers using loitering, and refusing to work for reasonable wages.‖

The first attempt on the part of a person dependent on his labour for his support, to assert free agency, by changing his abode, or by making a bargain for his services, or even by refusing to work for 'bare meat and drink,' rendered him liable to be whipped and sent back to his place of birth, or last residence, for three years; or, according to some statutes, for one year, there to be at the disposal of the local authorities. The second attempt subjected him, at one time, to slavery for life, 'to be fed on bread and water and refuse meat, and caused to work by beating, chaining, or otherwise;' and for the third he was to suffer death as a felon.

We have seen that the 12th Rich. II. required the impotent poor to remain for life where they were found at the proclamation of the act, or at the places of their birth.

* 11th Hen. VII. cap. 2. † 22nd Hen. VIII. cap. 12.
‡ 27th Hen. VIII. cap. 25. § 1st Ed. VI. cap. 3.
‖ 3rd & 4th Ed. VI. cap. 16. 14th Eliz. cap. 5. 39th Eliz. cap. 4.

The subsequent statutes require them to proceed either to their places of birth, or last places of residence for three years. The law assumed, as we have already remarked, that they would be supported there by voluntary alms; and as respects the able-bodied, it assumed that an able-bodied slave, for such the labourer given up to the local authorities was, could always be made worth his maintenance—that maintenance being, of course, the lowest that could keep him in working order. It appears, however, that casual alms were found an insufficient or an inconvenient provision for the impotent; that the local authorities were not sufficiently severe taskmasters of the able-bodied; and that the keeping them at work required some fund, by way of capital. The 27th Hen. VIII. cap. 25 (1536), therefore, requires the parishes to which the able-bodied should be sent, 'to keep them to continual labour in such wise that they may get their own living by the continual labour of their own hands;' on pain that every parish making default shall forfeit twenty shillings a month. It directs the churchwardens, and two others of every parish, to collect alms and broken meat, to be employed in supporting the impotent poor, and 'setting and keeping to work the sturdy vagabonds;' and forbids other almsgiving, on pain of forfeiting ten times the amount. This is the first attempt at making charity legal and systematic; and it was obviously a part of the scheme for confining the labouring population to their own parishes. It seems to have been supposed that voluntary alms, systematically distributed, would provide wholly for the

impotent, and form a fund which, aided by the fruits of their forced labour, would support the 'sturdy vagabonds;' and, therefore, that no one could have an excuse for changing his residence.

In the early part of Elizabeth's reign was passed a statute, 5th Eliz. cap. 3 (1562), inflicting the usual penalties, whipping, slavery, and death, on sturdy vagabonds; that is to say, on those who, having no property but their labour, presumed to act as if they had a right to dispose of it; and containing the usual provisions for confining the impotent poor to their parishes. In one respect, however, it was a great step in advance; for it contains for the first time a provision enabling the justices to tax, at their discretion, those who refused to contribute to the relief of the impotent and the keeping at work the able-bodied.

Concurrently with this statute, and indeed as a part of it—for it is the next chapter on the roll of parliament—was passed the 5th Eliz. cap. 4. This statute requires all persons brought up to certain specified trades, at that time the principal trades of the country, and not possessed of property, or employed in husbandry, or in a gentleman's service, to continue to serve in such trades; and orders that all other persons, between twelve years old and sixty, not being gentlemen, or students in a school or university, or entitled to property, and not engaged in maritime or mining operations, be compelled to serve in husbandry with any person that will require such person to serve, within the same county. Females, in corporate towns,

between the ages of twelve and forty, and unmarried, are to be disposed of in service by the corporate authorities, at such wages, and in such sort and manner, as the authorities think meet. The hours of work are fixed by the statute; and the justices are twice a year, after 'conferring together respecting the plenty or scarcity of the time,' to fix the wages. Persons directly or indirectly paying more are to be punished by imprisonment and fine; persons receiving more, by imprisonment. No person is to depart from one parish to another, or from one hundred or county to serve in another hundred or county, without a license from the local authorities.

When we recollect that disobedience to these enactments exposed a man or a woman to be included in the proscribed class of vagabonds, punishable by whipping, branding, slavery, and death, it must be admitted that, whatever might be the practice, the *law* gave little freedom to the labouring classes.

The 14th Eliz. cap. 5 (1572), carried on the same legislation against the able-bodied, merely aggravating the penalty, by subjecting the offenders (that is, all persons who would not work for what the justices should think reasonable wages) to whipping and burning for the first offence, and to the penalties of felony for the second. It made a farther approach to the present system, by directing the fund 'for setting to work the rogues and vagabonds,' and relieving the impotent, to be raised by a general assessment.

Twenty-five years afterwards, the two acts of the 39th

Eliz. cap. 3 & 4 were passed, which for the first time divided into separate statutes the punishment of the able-bodied, and the relief of the impotent. By the second of these acts vagabonds (including, we repeat, persons able to labour, having no lord or master, not using any lawful employments, and labourers refusing to work for common wages) are to be whipped, but not branded, and sent back to their parishes: if they appear to be such as will not be reformed, they are to be transported, or adjudged perpetually to the galleys.

The other act, the 39th Eliz. cap. 3, differs so slightly from the 43rd Eliz. cap. 2, that it requires no further attention.

The 43rd of Elizabeth directs, that the churchwardens and two or more householders, to be appointed by the justices, shall take order, with the consent of the justices, for setting to work children, and all persons having no means to maintain themselves, and using no ordinary or daily trade of life to get their living by; and to raise a fund by taxation of the inhabitants for such setting to work, and for the necessary relief of the lame, impotent, old, and blind poor not able to work. And the justices are directed to send to the house of correction, or common jail, 'such as shall not employ themselves to work, being appointed thereunto as aforesaid.'

It appears from this statement that the 43rd of Elizabeth deserves neither the praise nor the blame which have been lavished on it. So far from having been prompted by benevolence, it was a necessary link in one of the

heaviest chains in which a people calling itself free has been bound. It was part of a scheme prosecuted for centuries, in defiance of reason, justice, and humanity, to reduce the labouring classes to serfs, to imprison them in their parishes, and to dictate to them their employments and their wages. Of course, persons confined to certain districts by penalties of whipping, mutilation, and death, must be supported; and, if they were capable of labour, it was obvious that they ought to be made to contribute to the expense of their maintenance. Thence arose the provisions for relieving the impotent, and setting to work the able-bodied. But these provisions do not, on the other hand, deserve the censure passed on them by the Committee of the House of Commons in 1817. They were not of a nature to induce the industrious to relax their efforts. They held out no temptations to idleness. The able-bodied who were the objects of the 43rd of Elizabeth, were those 'who, having no means to maintain themselves, used no ordinary and daily trade of life to get their living by;' such persons were, by the previous acts, criminals; the work to which they were to be put was forced work; and if they did not employ themselves in it, 'being thereunto appointed as aforesaid,' the justices were to commit them to jail. The industrious labourer was not within the spirit or the words of the act. This was, indeed, the complaint of Lord Hale. 'The plaister,' says his lordship, 'is not so large as the sore. There are many poor who are able to work if they had it, and had it at reasonable wages, whereby they might support themselves and their

families. *These are not within the provision of the law.*'*

And it was long before the legislature assented to any extension of the 43rd of Elizabeth. The 8th & 9th Will. III. cap. 30, passed nearly a century afterwards, 'To the intent that the money raised *only* for the relief of *such as are impotent as well as poor* may not be misapplied,' requires all persons receiving relief and their families, to wear a badge, containing a large Roman P, and the first letter of the name of the parish from which they received relief; the object being not, as has been supposed, to degrade the pauper, but to afford an easy means of detecting the overseer who had relieved an able-bodied person.

The oppressive legislation of the Plantagenets and Tudors was unsuccessful. The provisions on which its efficacy depended, namely, the regulation of wages by the justices, the punishment of those who refused to work for such wages, or who paid more than such wages, and the punishment of those who left their parishes without license, became gradually obsolete. Legally considered, they remained in force until the present century. Sir Frederic Eden has collected regulations of wages by the justices, from the 35th Eliz. (1593) down to 1725. And the last which he gives, that regulating wages for the county of Lancaster in 1725, contains an exposition of the law by

* See Lord Hale's Paper at length, in Burn's *History of the Poor Laws*, p. 141.

the justices, in the spirit of the times of Henry VIII. or Elizabeth :—

That the transgressors may be inexcusable when punished, we, the said justices, publish these denunciations, penalties, punishments, and forfeitures which the statutes impose. No servant that hath been in service before ought to be retained without a testimonial that he or she is legally licensed to depart and at liberty to serve elsewhere, to be registered with the minister of the parish whence the servant departs. The master retaining a servant without such testimonial forfeits five pounds. The person wanting such testimonial shall be imprisoned till he procure it. If he do not produce one within twenty-one days, to be whipped as a vagabond. The person that gives more wages than is appointed by the justices shall forfeit five pounds, and be imprisoned ten days; the servant that takes more to be imprisoned twenty-one days. Every promise or gift whatever to the contrary shall be void. We, the said justices, shall make strict enquiries, and see the defaults against these ancient and useful statutes severely corrected and punished.*

But these seem to have been only occasional ebullitions of magisterial activity. It is admitted that the justices seldom exercised their powers of regulating wages: † and it is scarcely possible that, if they had obeyed the injunctions of 5th Eliz. and 2nd James I. cap. 6, and proclaimed every half-year the price of labour in every employment for the next six months, and imprisoned for ten days every employer of labour who gave more, contemporary writers would not have frequently alluded to a law by which every class would have been constantly affected. Their silence proves that it became practically obsolete. It was a *lex sine moribus.*

* Eden, vol. iii. p. cx.

† Ruggle's *History of the Poor*, i. 105. Eden, vol i. p. 141.

The attempt to confine the labourer to his parish, by punishing him if he quitted without a license, appears to have been equally ineffectual. This may be inferred from the recital in the 13th Car. II. cap. 12 (1662), which states that—

By reason of some defects in the law, poor people are not restrained from going from one parish to another; and therefore do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy, and, when they have consumed it, then to another parish.

The defect of the law was its severity, and the remedy applied by the statute was to enable the justices, on complaint of the overseers that a new comer was likely to be chargeable, to remove and convey such person to the parish where he was last legally settled, unless he gave security to indemnify his new place of residence.

This was the first attempt to prevent the migration of the able-bodied by any means except punishment; and such was its success, that all the subsequent efforts of the legislature have been made in an opposite direction. Thirty-five years afterwards, the act 8th & 9th Will. III. cap. 30, was passed, which recites that—

Poor persons are for the most part confined to live in their own parishes, and not permitted to inhabit elsewhere, though their labour is wanted in many other places.

And enacts that—

If a person coming to reside in a parish, shall at the same time deliver to the overseers a certificate from the overseers of another parish, acknowledging him to be legally settled there, and obliging

themselves to provide for him and his family if chargeable, such person shall not be removed until actually chargeable.

But as a person who wished to quit his parish could not require the overseers to furnish him with this certificate, the remedy was insufficient; and the legal restraint imposed by the 13th Car. II. continued for more than a century, until it was finally removed by the 35th Geo. III. cap. 101 (1795), which enacted that no poor person should be removed until actually chargeable.

The fate of the law which authorised relief at the expense of the parish was very different. There is so much pain in witnessing distress, and so much pleasure in procuring its relief—there is so much sympathy with unmerited misfortune, and with the sufferings to which the wife and children are exposed through the misconduct of the husband and father—misery and destitution are so severe a punishment for idleness or improvidence—the niggardliness of those whose refusal throws the whole burden of charity on the benevolent is so disgusting—and, we must add, the assessment and distribution of a poor rate give so many opportunities of undue profit, and so many means of gratifying the love of power and of popularity—that nothing but the strictest rules, vigilantly superintended and severely enforced, can restrain those whom the law enables to create and to manage a fund for charitable purposes, to decide how much shall be raised, and to whom and on what grounds and in what proportions it shall be awarded.

The rules laid down by the 43rd of Elizabeth were

strict; but the only sanction for their being observed was the yearly inspection of the overseers' accounts by two justices—an inspection which, if it ever was real, soon became nominal. The consequences are stated in the following recital in the 3rd William and Mary, cap. 11:—

Whereas many inconveniences do daily arise by reason of the unlimited power of the overseers, who do frequently upon frivolous pretences, but chiefly for their own private ends, give relief to what persons and number they think fit.

The legislature, however, succeeded better in detecting the evil than in curing it. The remedy applied was an enactment, that the names of all persons receiving relief should be registered—the register to be submitted from time to time to the parishioners assembled in vestry; and that no persons should receive collection, except those to whom they should think fit to allow it, '*except by authority, under the hand of one justice of peace residing within such parish, or, if none be there dwelling, in the parts near or next adjoining, or by order of the justices in quarter sessions.*'

This exception was construed as giving to the justices a power, which no previous statute had entrusted to them, of ordering relief. And the result is shown by the next statute, the 9th Geo. I. cap. 7, 1722, which states that—

Under colour of the 3rd & 4th William and Mary, many persons have applied to some justices of peace, without the knowledge of any officers of the parish; and thereby, upon untrue suggestions, and sometimes upon false or frivolous pretences, have obtained relief, which hath greatly contributed to the increase of the parish rates.

The remedy again exasperated the disease. It was an enactment, not depriving the justices of the power which they had assumed and abused, but forbidding them to exert it until oath were made that the applicant had a reasonable ground for relief, and had been refused; and until the overseers had been summoned to show cause why it should not be given. The commentary on these acts by the Poor Law Inquiry Commissioners deserves to be quoted:—

> The 3rd & 4th William and Mary, which was passed to check the profusion of overseers, to enable the vestry to decide whom *they* should think fit and *allow* to receive relief, was construed as authorising the justices to order relief to those who applied to them without the knowledge of the parish officers; and the act which was passed to remedy this abuse enabled the justice, on the pauper's statement of some matter which the justice should judge to be a reasonable cause or ground for relief, to summon the overseers to show cause why relief should not be given, and to order such relief as *he* should think fit—an order against which there is no appeal.*

Some acts of parliament have produced more extensive mischief than the two which we have just quoted; but probably there are none which have been so palpably unsuccessful. The enactments by which the discretionary powers of the overseer to give relief were intended to be controlled were utterly disregarded; excepting so far as, by a strange perversion, the justices made them a ground for assuming discretionary powers, not to forbid, but to order relief themselves.

* Report, p. 120.

The 9th Geo. I. cap. 7, however, contained one clause, the importance of which cannot easily be exaggerated. This is the clause which authorised the overseers of any parish, with the consent of the inhabitants, to purchase or hire a house, and to keep and maintain therein any poor of the parish desiring relief; and enabled any two or more parishes to unite in purchasing or hiring a house for the reception of the poor of the united parishes; and enacted that no poor who refused to be lodged and kept in such houses should be entitled to ask or *receive* parochial relief. It is true that the beneficial effects of this clause were only temporary; but it pointed out the mode, and, we firmly believe, the only mode, in which a public provision for the poor can be safely administered; and when the cause of its failure had been ascertained, it afforded, more than 120 years afterwards, the foundation for the only English poor law which has been really successful.

We have said that the beneficial effects of this statute were only temporary.

We possess the following estimates and returns of the amount of the expenditure on the poor, between the Restoration and the year 1785:—

	Estimates.	£
1673	Computed by a writer.—*Harl. Mis.* 8, 524 .	840,000
1677	Andrew Yarranton *	608,333
1677	Richd. Haines †	700,000
1685	Arthur Moore and Dr. Davenant ‡ . . .	665,362
1698	R. Dunning ‖	819,000

* Cited Eden, 196. † Cited ibid. 198. ‡ Cited ibid. 228. ‖ Cited ibid. 249.

Returns.	£
Annual average during the three years ending 1750*	690,000
The year 1776*	1,521,000
Annual average during the three years ending 1785*	1,912,000

The estimates are probably all excessive—especially the first; but there is sufficient coincidence between them to show that, during the period between 1673 and 1698, the expenditure on the poor was positively as high as it was in 1750—twenty-eight years after the passing of the 9th Geo. I.; and, relatively to the population and the value of money, it must have been much higher. But when we come to the next period, 1776, we find an increase, during twenty-six years, of more than 100 per cent.; and during the next nine years, from 1776 to 1785, the increase is about 30 per cent. Some allowance must of course again be made for the increase of population, and the diminished value of money. But the thirty-five years, from 1750 to 1785, did not form a period during which these causes operated with much force; and when we consider that the increase of expenditure during that time was from 690,000*l.* to 1,912,000*l.*, or nearly 200 per cent., it is clear that they will account for only a small part of it.

Bishop Coplestone has traced the diminution of expenditure, which was the immediate consequence of the 9th Geo. I., and the subsequent increase, to its true cause—the institution of a workhouse system *without control.*

We find (says that acute writer) that the effect of workhouses

* Parliamentary Return.

in the first thirty years of the eighteenth century was considerable. A great reduction of the annual charge of the poor appears to have been effected during the first four or five years. After that, whether the administration became more negligent, or the terror which they first created, and which greatly reduced the number of paupers, had begun to abate, certain it is, that the poor rate again crept on till it equalled or exceeded its former amount. Nothing, indeed, is more natural than such a history of human establishments. They spring out of some strong necessity, or some prevailing opinions of the age. They are nursed with care in their infancy, and actively superintended by some benevolent and patriotic men: and while the zeal lasts, while the authors of them are flattered with observing their success, and are enabled to point to the fruits of their own exertions, no symptoms of decay appear. *But a life so precarious is shorter even than the life of man; it is commensurate not with the existence, but with the activity only and the perseverance of individuals*, and seldom lives in full vigour through half a generation. Before the year 1776, the rates had risen in most places to three times their amount before the workhouse system was established. Theory never perhaps was verified so promptly and unequivocally by practice, as in the early declension of these institutions, and in their utter inefficiency when left to themselves, or, which is nearly the same thing, to any body of rules, however wisely framed.*

In the meantime, a most dangerous opinion began to prevail. It was supposed that the legislature had the power of providing, by direct interference, a comfortable subsistence for the poor; and it was justly argued, that, if it had the power, it was liable to the duty. This opinion was assisted by an unfortunate double meaning of the word *poor*. In one sense of that word, it means merely the aggregate of the individuals who, from in-

* Second Letter to the Right Hon. Sir R. Peel, p. 75.

firmity, or accident, or misconduct, have lost their station as independent members of society, and are really unable to earn their own subsistence. These persons form, in every well-ordered community, a small minority—a minority which it is in the power, and therefore within the duty of society, to relieve; but, if possible, to reduce, and certainly not to encourage. But this is not the sense in which the word *poor* is generally employed. In its widest acceptation it is opposed to the word *rich*; and in its most common use it includes all, except the higher and middle classes—in short, all who derive their subsistence solely from manual labour. In this sense Adam Smith states the definition of poverty to be, 'living from hand to mouth.' In this sense all the labouring classes, that is to say, nine-tenths of the inhabitants of England, are poor. The error which this ambiguity created, or at least encouraged, may be stated syllogistically.

It is the duty of the legislature to provide for all the *poor* (i. e. all the destitute).

All the labouring classes are *poor* (i.e. are without property).

Therefore it is the duty of the legislature to provide for all the labouring classes.

We *now* know that to attempt to provide by legislative interference, that, in all the vicissitudes of commerce and of the seasons, all the labouring classes, whatever be the value of their services, shall enjoy a comfortable subsistence, is an attempt which would in time ruin the industry of the most diligent, and the wealth of the most opulent

community. But before this could be acknowledged, it seems to have been necessary that the attempt should have been made, and should have been persevered in, until the ruin was palpably at hand.

It has generally been supposed that this attempt originated in the high prices and political apprehensions of the year 1795; and that the first example was the celebrated Edict of the Berkshire Magistrates, on May 6, 1795, in which they 'settled the incomes of the industrious poor' by a scale of relief, rising with the price of bread, and the numbers in a family, from 2*s.* a week to 25*s.**

But when we recollect that the industrious poor were pointedly excluded from the 43rd of Elizabeth, and that the 36th Geo. III. cap. 23, the act which legalised relief to them, was not passed until December 24 following, it is impossible to suppose that the magistrates who assembled at Speenhamland would have ventured to enact their law, or that their example would have been immediately imitated throughout the southern counties, unless the practice to which the Speenhamland Edict gave expression had already been prevalent, and had been sanctioned by public opinion. So early as the year 1764, the worst form of abuse, relief in aid of wages, had been proposed by one of the ablest of the early writers on the poor laws, Dr. Burn. He recommended the overseers to hire out claimants to those who would give the most wages, though under the usual price, and to make it up so much by the

* I. Eden, 577.

day as would reasonably maintain them.* The preamble of the 36th Geo. III. cap. 23, 'That the 9th Geo. I. is oppressive, inasmuch as it holds out conditions of relief injurious to the comfort and domestic situation and happiness of the industrious poor,' expressed the fashionable doctrine of the time. In December 1795, while that bill was before the House, Mr. Whitbread introduced a bill authorising the justices of the peace to fix a minimum of wages. The speeches from both sides of the House on this occasion show both the existing practice and the existing feeling.

Mr. Fox supported the measure on the ground that the magistrate ought to be authorised to protect the poor from the injustice of a griping employer; that few derived sufficient subsistence from their labour; and that the great mass of the labouring part of the community received parochial relief.† Mr. Lechmere stated that *no* agricultural labourer could support himself and his family with comfort, and that it was the duty of the legislature to relieve the industrious poor.‡ Mr. Pitt opposed the bill, among other grounds, because it would give the man with a small family too much wages, or the man with a large family too little; and in its place proposed to make parochial relief, where there were children, a matter of right and an honour.§

The bill which Mr. Pitt introduced in 1796 went still farther: it not only entitled the labourer to an allowance

* History of the Poor Laws, p. 219. † Fox's *Speeches*, vol. vi. p. 104.
‡ Hansard, vol. xxxiii. p. 703, *et post.* § Ibid.

in proportion to the number of his children, but it authorised the parochial officers, if they thought the wages which he received from his employer insufficient, to make up the deficiency from the rates. It even authorised them to purchase and present to him a cow, or other domestic animal.*

Both bills were dropped: probably because the 36th Geo. III. cap. 23, which enabled a single justice, 'at his just and proper discretion, to order relief to any industrious poor person or persons, at his or her or their own home,' without limit and without appeal, had been already found a sufficient sanction for any profusion which the short-sighted benevolence of the time could require; but their introduction shows the general state of opinion.

In 1800 Mr. Whitbread renewed his bill for establishing a minimum of wages. He complained, that on searching the statute-book, he could find nothing to compel the farmers to do their duty; that is to say, to raise wages with the price of provisions. Mr. Pitt again objected to the bill, because it proposed one standard for the price of labour, without considering whether the labourer were an unmarried man, or a man with a numerous family; and he repeated, that he thought the distress would be best met by parochial aid.† Such was the state of political knowledge at the beginning of the present century, and such were the opinions of eminent men of both parties.

* See the Bill, Eden, cccxiii. † 34 Hansard, p. 1427.

When the monstrous doctrine had been promulgated, that a tax assessed and distributed at the discretion of the justices, the vestries, and the overseers, was to form a regular element in the subsistence of the labouring classes—when more than 15,000 sets of overseers, 15,000 vestries, and 2,000 justices, acting generally independently, and often in opposition to one another, decided in each parish how much should be raised, and to whom, and in what shares, and on what grounds, and on what conditions it should be given—it is obvious that the forms of management and mismanagement must have been almost infinite.

We will confine our attention to a single subject, or rather to a single branch of a single subject—the outdoor relief of able-bodied men.

The Poor Law Inquiry Commissioners, writing in the beginning of the year 1834, divided the outdoor relief of the able-bodied into relief in kind and relief in money; and subdivided relief in money into five classes — 1, Relief without labour; 2, The allowance system; 3, The roundsman system; 4, The labour rate system; and, 5, Parish employment.

Relief in kind was generally effected by payment to the owners of cottages, themselves almost always vestrymen or overseers, rents on behalf of the poor—a practice which soon created a large and lucrative cottage property—or by making presents of clothing, or of a ticket for the purchase of clothing, at a shop kept by a vestryman or by an overseer.

Of the five forms of money relief, they say that—

1. Relief without labour was sometimes given by a weekly payment, from 2*s.* to 3*s.* a week, without condition; but they add—

It is more usual to give a rather larger weekly sum, and to force the applicants to give up a certain portion of their time, by confining them in a gravel-pit, or in some other enclosure, or directing them to sit at a certain spot and do nothing, or obliging them to attend a roll-call several times in the day, or by any contrivance which shall prevent their leisure from becoming a means either of profit or of amusement.*

2. Allowance was a weekly payment from the parish, in aid of wages, to persons employed by individuals. It was regulated by the price of bread, and the number of persons in a family; the avowed object being to prevent what even Mr. Pitt considered an evil—a person unmarried, or with a small family, being better off than a man with a large family, and to enable the farmer to feed his labourers, as he fed his other stock, only in proportion to their necessities. In some places the amount earned was ascertained, and only the remainder paid from the rates; in others the earnings were not enquired into, but were assumed to consist of a certain sum, generally the lowest average wages of day-labour. In others, no enquiry was made as to wages, but a given sum, generally eighteenpence a week, was paid for each child above three, or two, or even one. This was called head-money. Frequently the law of a district was promulgated in the form of a scale.

The following are examples of scales:—

* Report, p. 20.

ESSEX. *Division of Chelmsford*, 1821.

At a special meeting of the magistrates acting in and for the said division, held at the Justice Room, in the Shire Hall, on Friday, the 15th day of June, 1821,

It was resolved: That the under-mentioned scale of relief, for the assistance of the overseers of the poor within the said division in relieving the necessitous poor, be recommended: That they do provide each person in every family with the means of procuring half a peck of bread-flour per week, together with 10*d.* per head for other necessaries, if the family consist of two only; 8*d.* per head, if three; 6*d.* per head, if four; and 5*d.* per head, if more than four.

N.B.—The above-mentioned sums are exclusive of fuel.

By order of the magistrates,

T. ARCHER, *Clerk.**

Arundel Borough, Nov. 19, 1830.

At a meeting of the inhabitants, held this day, the masters agreed to give able-bodied men 2*s.* per day, wet and dry, and an allowance of 1*s.* 6*d.* per week for every child (above two) under fourteen years of age.

Lads from fourteen to sixteen, 8*d.* per day; lads from sixteen to eighteen, 1*s.* per day; young men from eighteen to twenty-one, 1*s.* 6*d.* per day, from this time to Lady-day.

Agreed to by the magistrates, assembled at their meeting this day.†

At a vestry meeting holden in the parish church of Edgefield, on Monday, April 8, 1833,

Resolved: That the rate of wages for able-bodied men be reduced to 4*s.* per week: That 1*s.* per week be given to each wife, and 1*s.* for each child per week: If there be not any children, allow the wife 1*s.* 6*d.* per week.

Agreed for three months from this date, to commence Monday, 15th.

[Here follow 15 signatures.]‡

* Report, p. 23. † Ibid. p. 24.

‡ Ibid. p. 82. Edgefield is a village in Norfolk, containing, in 1831,

It will be observed that the first of these scales is a formal document, originating with the magistrates of a division of a county; the second is a resolution by the inhabitants of a borough town, subsequently sanctioned by the magistrates; the third is a specimen of village legislation.

We add Mr. Majendie's comment on the Chelmsford scale:—

In Coggeshall, Essex, weekly wages are 8*s.*, but by piece-work a good labourer may earn 10*s.* Now consider the case of labourers with four children, for the subsistence of which family (according to the Chelmsford scale, which is the law of that district), 11*s.* 6*d.* is required. Of this sum the good labourer earns 10*s.*, and receives from the parish 1*s.* 6*d.* The inferior labourer earns 8*s.*, and receives from the parish 3*s.* 6*d.* The man who does not work, and whom no one will employ, receives the whole from the parish.*

3. We now come, thirdly, to the roundsman system, sometimes termed the billet, ticket, or stem system.

This consisted in the parish paying the occupiers of land to employ the labourers at a rate of wages, fixed in each case by the parish, and depending on the wants of the applicants. In general it was effected by a sale, on the part of the parish, of the labourers' services to the farmer —the difference between the wages paid by the farmer and received by the labourer being made up out of the rates.

At Yardley Hastings in Northamptonshire (says Mr. Richardson), all the unemployed men are put up to sale weekly; and the clergy-

167 families, of whom 130 were agricultural. The rental in 1815 was 1,730*l.*; the expenditure on the poor, in 1829, 1,515*l.*; in 1785, it was 303*l.*

* Poor Law Report, Appendix A, vol. i. p. 230.

man of the parish told me that he had seen ten men the last week knocked down to one farmer for 5*s*. There were about seventy men let out in that manner out of a body of one hundred and seventy.*

In Hasilbury, Dorsetshire, the overseers shared out the pauper labourers among the farmers, including themselves, and paid them for their work *wholly* out of the rates.†

4. Fourthly, the labour-rate system consisted in an agreement that each ratepayer should employ and pay, according to a rate fixed by the vestry, a certain number of the labourers having settlements in the parish; or pay to the overseer the wages of those whom he made default in employing and paying.

The provisions of these agreements were very various; but the object of them all was to throw on the class of ratepayers which employed no labourers, or the fewest labourers, in proportion to their rateable property, a proportion of the wages and rates which had previously been paid by others. The shopkeeper was sacrificed to the farmer; the occupier of grass land to the occupier of arable; and the tithe-owner to everybody. In Pulborough, Sussex, the rector was required to employ or pay for sixty-two men, at 10*s*. a week each—or 1,612*l*.—besides his ordinary poor rate of 420*l*.—altogether 2,032*l*.—an amount which appears to have been about double the value of the benefice.‡

We are ashamed to say that labour rates were sanctioned

* Poor Law Report, Appendix A, p. 1, p. 401.

† Appendix B, Question 39, p. 141. ‡ Report, p. 203.

by the temporary Act of the 2nd & 3rd William IV. cap. 96.

5. Parish employment, the last form of relief which we have to consider, and the only one which was legal, was also the one which was least frequently adopted. Out of 7,036,968*l.* expended for the relief of the poor in 1832, only 354,000*l.*, scarcely one-twentieth part, was paid for work, including work on the roads and in the workhouse.

This may easily be accounted for. In the first place, parish employment is costly. It requires some expenditure for tools and materials, and more for superintendence; and the returns are nothing. Secondly—and that was probably the principal reason—parish employment does not afford a direct profit to any individual.

Under most of the other systems of relief (said the Commissioners of Inquiry) the immediate employers of labour can throw on the parish a part of the wages of their labourers. They prefer, therefore, those modes of relief which they can turn to their own account—out of which they can extract profit under the mask of charity.*

The result, however, whatever were its motives, was not to be regretted.

Whatever (says Mr. Richardson) the previous character of a man may have been, he is seldom able to withstand the corruption of the roads; two years' occasional employment there ruins the best labourer. Moreover, in very many instances, the difference between parish pay for pretending to break stones on the road, and the real wages given by the farmer, does not amount to more than 1*s.* a week; and, if the man has a family entitling him to

* Report, p. 37.

receive a given sum by the scale as head-money, he receives as much from the parish as he would from any other employer. Accordingly, the labourers who are only occasionally employed are nearly indifferent to pleasing or displeasing their employer; they quit with the remark which I heard at least a dozen times from different overseers—'I can get as much on the roads as if I worked for you.' *

We are sorry to prolong this disgusting detail of fraud and oppression; but we must illustrate it by the following extracts from the reports of Mr. Okeden, Mr. Majendie, and Mr. Gulson, which show the practical working of almost all these systems:—

At Urchfont, a parish in the district of Devizes, the population of which is 1,340, and the annual poor rates about 1,450*l.*, there are above fifty men out of employ for forty-five weeks every year. To these the parish pays 3*s.* a week each during that time, and enquires no further about their time and labour; thus creating an annual item of expense of nearly 400*l.*

At the parish of Bodicott, in the district of Bloxham, a printed form is delivered to those who apply for work. The labourer takes this to the farmers in succession, who, if they do not want his labour, sign their names. The man, on his return, receives from the overseer the day's pay of an industrious labourer, with the deduction of 2*d.* The same system takes place in other parishes.

At Deddington, during the severe winter months, about sixty men apply every morning to the overseer for work or pay. He ranges them under a shed in a yard. If a farmer or anyone else wants a man, he sends to the yard for one, and pays half the day's wages; the rest is paid by the parish. At the close of the day the unemployed are paid the wages of a day minus 2*d.*†

At Rotherfield, in East Sussex, 120 men were out of employ in

* Appendix A, Part I. p. 399. † Ibid. pp. 6–12.

the winter of 1831–32, and various modes were attempted to dispose of them. First, they were set to work on the parish account —single men at 5*s.*, men with families at 10*s.* per week. The pay being the same as farmer's pay, the men left the farmers, in order to get the same pay with less work. Then they were billeted among the farmers at 1*s.* per day from the farmers, and 8*d.* from the parish. This was changed to 1*s.* from the parish, and 8*d.* from the farmer. The men so billeted did not keep the proper hours of work; then the farmers' men, finding that they who worked the regular hours were paid no more than those who were irregular, gave up their employment to become billeted men, and the farmers were induced to throw their men out of employ, to get their labour done by the parish purse. The billeting system having failed, a sixpenny labour-rate was made: it soon failed. Magistrates now recommend 6*d.* in the pound to be deducted from the full rate, and that the occupier should be allowed to pay that proportion of his rate by employment of the surplus hands.*

The labourers are much deteriorated. They do not care whether they have regular work or not; they prefer idle work on the roads.

At Burwash, in East Sussex, in the year 1822, the surplus labourers were put up to auction, and hired as low as 2*d.* and 3*d.* per day; the rest of their maintenance being made up by the parish. The consequence was, that the farmers turned off their regular hands, in order to hire them by auction when they wanted them. During the last year, the following plan has been adopted: —The names of the occupiers are written on pieces of paper, which are put into a bag; the labourer draws out a ticket, which represents 10*s.* worth of labour, at fair wages; next week the labourer draws another master, and this is repeated till the occupier has exhausted the shilling rate. This has continued two winters: much fraud is mixed up with the practice. Some farmers turn off their labourers in order to have ticketed men; other occupiers refuse to pay the rate, and against them it is not enforced.†

In the books of Hampton Poyle are the following items:—

* Appendix A, Part I. p. 176. † Ibid. p. 177.

	£	s.	d.
Paid for men and boys standing in the pound, 6 days	6	7	0

And in every week's payments a list of these labourers, thus—

	£	s.	d.
W. Wheeler, standing in the pound 6 days .	0	8	0
J. Cartwright, standing in the pound 4 days .	0	6	0*

The old fable, which describes the contest between the wind and the sun to deprive the traveller of his cloak, was never better illustrated. For more than three hundred years, from the beginning of the fourteenth century to the middle of the seventeenth, the English parliament endeavoured to confine the labourer to his parish, and force him to work there at the wages which the justices should think fit. They accumulated enactment on enactment, and severity on severity; they threatened the employer with fine and imprisonment, and the labourer with torture, chains, mutilation, and death; and they failed. By reason, says the preamble to the 1st Ed. VI. cap. 3, 'of the foolish pity and mercy of those who should have seen the said goodly laws executed, the said goodly statutes have had small effect.' But the result which the legislature, using all its efforts for the purpose—disregarding, in the pursuit of its object, every principle of liberty or humanity—could not attain by violence, was produced, *against its intention*, by ill-directed benevolence. The poor might well say, we can deal with our enemies, only save us from our friends.

Regardless as the local authorities were of the restrictions

* First Annual Poor Law Report, p. 184.

imposed on them by the law, they bound themselves, at least in the agricultural parishes, by one rule. They never gave allowance from the rates of a parish to able-bodied labourers who were not settled in it. And, of course, they had no motive to give such relief to the able-bodied who belonged to their parish, but resided elsewhere. They were ready to pay wages out of the rates for their own benefit, but not for the benefit of others. In a pauperised district, where the labourer's income was composed partly of wages and partly of allowance, the married man had practically no more free will as to the parish in which he should reside, the master whom he should serve, or the subsistence that he and his family should receive, than the horse that he drove. In parochial language, he *belonged* to the parish in which he had his legal settlement. There only he could receive allowance; and, generally speaking, there only he could get employment. The law decided what should be his place of settlement; the magistrate, what should be his whole income; the vestry, how much of it should consist of wages, and how much of allowance; and the overseer, who should be his master.

Of course, such a system, monstrous as it now seems to us, had much to recommend it. It was pleasant to many of the higher classes to escape both from the pain of witnessing distress, and from the trouble of relieving it. Real active benevolence requires time and investigation, and imposes responsibility: they liked to have nothing to do but to pay their rates, and be charitable by their proxy, the overseer. Many, again, were comforted by the reflec-

tion, that the wives and children of the labouring classes could no longer suffer for the misconduct of the head of the family. And some, perhaps, of still weaker feelings, were glad that even the profligate could claim a comfortable subsistence. The magistrates enjoyed influence by which the soberest mind might have been intoxicated: they were the representatives of benevolence as well as of justice—the arbiters between all the labourers and all the employers of their divisions: they were profuse without cost, and arbitrary without responsibility; they made and remade their laws without control, and enforced them without appeal.

It was convenient to the farmer to reduce the unmarried to the minimum of subsistence; to have the services of an able-bodied man for eightpence, or sixpence, or even twopence a day; to turn off his labourers in frost or in rain; and take them back from the gravel-pit or the roads, or the parish pound, or the overseer's yard, whenever he wanted their assistance; and to throw the greater part of their maintenance on the shopkeeper or the rector, and the remainder, in the form of deduction from rent, on the landlord. The owner of cottage property found in the parish a liberal and a solvent tenant, and the petty shopkeeper and publican attended the vestry to vote allowance to his customers and debtors. The rental of a pauperised parish was, like the revenue of the Sultan, a prey of which every administrator hoped to get a share.

But when a generation of pauperised labourers had grown up, it was found that new evils were inseparable

from these new advantages. It was found that to enact that no one shall lose by idleness was to enact that no one shall gain by industry, and that to repeal the penalties of misconduct was to repeal the rewards of merit. The great truth that slave labour is more expensive than free labour, became apparent. It was shown to be so even when only half the slave's maintenance was paid by the master.

While the labourer (said Mr. Clark, a Bledlow farmer, in his evidence, taken after the Poor Law Amendment Act was in operation) was half-pauper and half-labourer, he was like a man with two masters, and could do justice to neither; but, now he feels that he is wholly a labourer, he works hard and willingly. My 8*s.* wages will purchase for me labour sufficient to produce 10*s.* worth of crop; but with a pauper, my 5*s.* paid will be a loss. With independent labourers, the more I have in moderation, the more I make; but, for the paupers, the more I have the more I lose: I will employ as many of the former and as few of the latter as I can. Ten independent labourers would do me more good than five: while of paupers, five would be more desirable than ten.*

Even if these semi-servile workpeople had been efficient instruments, the mode in which they ultimately became distributed through the pauperised districts would have destroyed half the value of their services. We have seen that the allowance system imprisoned every man within the parish to which, from the accidents of settlement, he belonged. Nothing could be more anomalous than such an arrangement. Without confusing our readers by an attempt to expound the English law of settlement, which

* First Annual Poor Law Report, p. 259.

even now is intricate and arbitrary, it may be enough to say that, during the period of which we are treating, a settlement was acquired by inheritance, by marriage, by property, or by a residence of forty days, under some one of a set of numerous and capricious conditions. And every acquisition of a new settlement destroyed the previous one. Even when things were left to take their own course, accidental circumstances—such as the establishment or the abandonment of a manufacture, an inclosure, a change in the mode of tillage—in short, anything which affected the demand for labour within the narrow precincts of a parish, changed the proportions between the number of persons entitled to settlements, and the number of persons whose services were really wanted there.

As the burden of poor rates was more and more felt by landlords, all sorts of devices were resorted to, in order to shift settlements from one parish to another. Where a parish belonged to a single owner, or to a few owners acting in concert, the cottages were pulled down, and the inhabitants bribed to sleep in adjoining parishes, under conditions transferring their settlement. We have visited parishes where there was not a house except the squire's mansion and the parsonage, and the whole labour was performed by persons legally resident in the neighbouring villages. Where the number of proprietors or the interests of cottage-owners rendered this impossible, the object was effected, on a limited scale, by bribing girls to marry men belonging to other parishes, and by apprenticing boys to masters resident elsewhere. And the result was a

distribution of the population, without reference either to their welfare or their utility. In a pauperised district, even if the labourers had been industrious, they would have been inefficient, because they were ill-distributed: even if they had been well-distributed they would have been inefficient, because they had no motive to be industrious.

When we look back at this state of things, it seems strange that, where such abuses prevailed, the land should have remained in cultivation. And we firmly believe that, if the remedy had been delayed, even for a very few years —to the time, for instance, at which we are writing—calamities would have fallen on a large portion of England, such as no free country, unassailed by a foreign or a domestic enemy, has ever endured. But to discover a remedy was not easy, and to apply one was to encounter the determined hostility of all those who were incapable of understanding the nature of the evil or of the remedy—of all the sentimentalists who estimate a law solely by its apparent harshness when applied to extreme cases—of all those who gained, or thought that they gained, or hoped to gain, influence or profit by the existing maladministration—and of all the unprincipled politicians who might hope to make opposition to the proposed law an instrument in party-warfare.

Such dangers the Tory party—which, with a few brief intervals, reigned from 1784 to 1830, in fact during the whole period in which these abuses grew into maturity—would not incur. They looked on, while a Committee of the House of Commons predicted 'the neglect and ruin of

the land, and the waste and removal of other property, to the utter subversion of that happy order of society so long upheld in these kingdoms;' they looked on while poor rates rose from 2,004,239*l.*, in 1785, to 6,829,042*l.* in 1830; they looked on while in whole counties the rates equalled a third of the remaining rental—while estates were abandoned, and whole parishes were on the point of being thrown up, without capital or occupier, to the poor; they looked on while the labouring classes lost their subordination, their industry, their skill, their honesty, their benevolence, and even their natural affections.

At length a government arose, willing, in a good cause, to brave unpopularity. One of its first measures, even before the Reform Bill was carried, was to appoint a commission to enquire into the effects of the poor laws, and to suggest measures for their improvement.

Without dwelling on the report of the commissioners, we proceed to the Act which resulted from their recommendations—the Poor Law Amendment Act. That Act was in part founded on the 9th Geo. I.—the Act which enabled parishes singly, or in union, to establish workhouses, and denied relief to those who refused to enter them. But the 9th Geo. I. was merely permissive, and contained no machinery for its details, nor for its general superintendence. It remained therefore, as far as the uniting parishes for workhouse purposes is concerned, a dead-letter. We are not aware that a single union was ever formed under its provisions; and though it occasioned the establishment of many workhouses for separate parishes, they became, in

the absence of all control, mere almshouses for the impotent, and hotbeds of vice for the able-bodied.

The original and the important part of the Poor Law Amendment Act—the part to which it owes its whole efficiency—was the creation of a Central Board of Commissioners, and the enactment—

That the administration of relief to the poor should be subject to their direction and control; and that they should make all such rules, orders, and regulations for the management of the poor, the government of workhouses, the guidance and control of guardians, vestries, and paid officers, and carrying the Act into execution in all other respects, as they should think proper; but should not interfere to order relief in any individual case.

To enable the Central Board to adapt their rules to the varying circumstances of the 15,000 parishes over which they were to preside, and to superintend their execution, they were directed to appoint assistant-commissioners, each itinerant within his own district. They were authorised to unite parishes for the administration of the poor laws, to give a new organisation to the parishes which they should think it better to keep separate: and the Bill enacted, that in every such union or parish a board of guardians should be elected by the owners and occupiers, the resident magistrates being ex officio guardians; that the workhouses of such unions should be governed and the relief of the poor administered by such guardians, and that the commissioners should determine the number of the guardians, and prescribe their duties. It further enabled the commissioners to direct the guardians to appoint paid officers, with such salaries, qualifications, and

duties as the commissioners should prescribe, and to determine the continuance in office or dismissal of such officers. It directed that no guardian should act except as a member, and at a meeting, of the board, and that three members at least should concur in any act of the board. And, subject to some unimportant exceptions, and to the general control of the commissioners, the relief of the poor was placed exclusively in the hands of the guardians.

These, with some enactments respecting bastardy and settlement, into which we do not propose to enter at present, are the principal provisions of this celebrated Act.

It is to be observed, that it made no direct change either in the nature or the amount of the relief to be given, or in the persons entitled to it. It legalised neither allowance nor relief, without labour; but it contained no enactments prohibiting them, or declaring their illegality. In this respect it differed from all of the many proposals for poor-law amendment that had been made since the beginning of the century; including the recommendations of the Commissioners of Inquiry. The Commissioners of Inquiry had recommended, that within two years all outdoor relief to the able-bodied, or their families, should, by express enactment, become unlawful—and the early drafts of the bill were framed accordingly. A trace of this is to be found in the existing Act, sect. 52, which enacts that it shall be lawful for the commissioners to declare to what extent, and for what period, relief may be administered to any able-bodied persons, or their families,

out of the workhouse of any union or parish—an enactment which, when considered with reference to the previous clauses as they now stand, giving to the commissioners the control over all relief whatever, seems mere surplusage; but which was necessary at the time of its first introduction, while there were previous prohibitory clauses.

It is to be observed, too, that although the Act placed the overseers under the control of the commissioners, and, in unions, made them the officers of the guardians, it did not expressly relieve them from the duties of making and collecting the rate, and distributing relief. From the most troublesome of these duties, the collection and distribution of the rate, they were afterwards in a great measure relieved, in unions and in parishes under boards of guardians, by the commissioners, who directed the appointment of paid collectors and paid relieving officers. But they are still legally bound to make and assess the rate, and to give relief in cases of sudden and urgent necessity.

The whole Act shows an anxious desire to avoid unnecessary innovation and direct interference. The object to be ultimately effected was the removal of an extensive and complicated set of abuses, which had become entwined with the habits and prejudices both of the distributors and the receivers of parish pay; and which could not be simultaneously abolished, if such an abolition were practicable, without suffering—intense, widespread, and, we must add, in most cases undeserved. The poor were not the authors of the system which had ruined their freedom,

their industry, and their morals: it had been imposed on them by the ignorance and vanity of the higher orders, and the avarice and fraud of the middle classes. To allow that system to continue would indeed have been the extreme of injustice and cruelty; but to attack it by direct enactment, and by prohibitions necessarily applicable to the whole of England, and incapable of modification according to the different habits and circumstances of 15,000 different parishes, would, if such an attempt could have succeeded, have been cruelty and injustice, differing only in degree.

But it would not have succeeded. The statute would have shared the fate of all its predecessors. It would have been perverted by the local authorities, misinterpreted by the courts of law, and have ultimately aggravated every evil that it was intended to suppress. The appointment of controlling commissioners; the creation through their agency of unions, depriving the magistrates, vestries, and overseers in those unions of their discretionary power, and enabling the commissioners gradually to introduce, and subsequently to enforce, a wise administration—was the only just, the only safe, and, in fact, the only practicable course.

But this course was subject to a serious danger—a danger that will recur with every vacancy in the commission. The commissioners and their assistants are the Act. They are the only persons necessarily appointed for the purpose of carrying it into execution. The relieving officers are nominated by the guardians, and the guardians are elected by constituencies who are often opposed

to the law—as in the well-known cases of Bolton, Nottingham, and Macclesfield—and who choose their guardians for the express purpose of defeating it. These, to be sure, may be called extreme cases; but, even when it is honestly administered, a poor law is, of all human institutions, the one most subject to derangement. There is no institution so eminently artificial; none which attempts to overrule or modify so many of the propensities given to us by nature, and so many of the checks which she has opposed to their undue indulgence. There is none in which abuses are so plausible; none in which they bring with them so much immediate convenience, and betray so little their ultimate mischief. If the central authority relax its vigilance or its activity—if it do not constantly readjust the nicely-balanced machinery which it has to manage—if it do not keep constantly before the thousands of administrative local authorities the principles by which they ought to be governed, and the dangers of every departure, however expedient it may appear in the particular instance—if it do not exercise its authority when its advice has been ineffectual, it will become a cloak for maladministration instead of a corrective.

> Non aliter, quam qui adverso vix flumine lembum
> Remigiis subigit, si brachia forte remisit,
> Atque illum in præceps prono rapit alveus amni.

The defect of the Act, therefore, if an unavoidable quality can be called a defect, was, and always will be, its dependence for its efficiency on the personal character of the commissioners and the assistant-commissioners. The

Melbourne Cabinet selected one out of the three commissioners from among their political opponents, and appointed another whose politics, so far as he had manifested them, were conservative, and entrusted to the Central Board, without even interposing a recommendation, the appointment of their assistant-commissioners. The only person connected with the commission who was not appointed by the commissioners was the secretary; and the talents, knowledge, and services of Mr. Chadwick were such, that it was impossible not to place him in the position either of commissioner or of secretary.

No public department has had a more difficult task than the Poor Law Commissioners, and none has executed it more successfully.

The Commissioners of Inquiry had reported that it was not expedient, or even practicable, to return to the provisions of the 43rd of Elizabeth, and exclude from relief the able-bodied labourer who professed to be unable to earn wages adequate to the support of his family. But they held that there must be some *test* of the truth of his representations; and that the test must be, making relief less eligible than independent labour. If he accepted these terms, that acceptance *tested* the reality of his wants.

These principles were acknowledged by the commissioners to whom the execution of the law was entrusted: the difficulty lay in their application.

There appear to be three modes, and only three modes, by which relief can be rendered less eligible than

independent labour:—1. By requiring from the pauper labour more severe or more irksome than that of the labourer. 2. By giving to him a subsistence inferior in amount or in quality. 3. By connecting his subsistence with disagreeable conditions. The second of these—the affording to the pauper a less amount of the necessaries of life than is earned by the labourer—could not be thought of. It would not be easy to do so, and to preserve him and his family in health and strength. And, even if it had been practicable, it would have been effectually resisted by public opinion. Even under the present workhouse system, which affords all the necessaries of life in much greater abundance than the cottage, the supposed inadequacy of the workhouse diet is a constant subject of popular complaint. How great would have been the indignation if such a complaint had had a real foundation!

The first expedient—or, as it has been called, the labour test—has been found practicable for short periods in towns, where the applicants for relief all reside in the same neighbourhood, and can be collected in one workyard, under one or two paid inspectors, and be employed in labour disagreeable to persons of sedentary habits. But long experience has shown its inapplicability to a scattered agricultural population, who must in independent employment submit to toil and exposure, and can be put to no severer work. This difficulty, added to that of finding vigilant inspectors, has reduced parochial employment, wherever it has been attempted in country districts, to almost nominal work, and therefore deprived it of all

claim to be a test; and even in towns it requires an unrelaxed inspection, which cannot be long sustained.

There remained therefore the third plan, which, abandoning the idea of rendering parish subsistence less abundant than wages, or parish labour more severe than that exacted by an individual employer, proposed to connect the relief of the able-bodied with a condition which no man not in real want would accept, or would submit to when that want had ceased. Our readers are aware that the condition thus selected as a test was that the able-bodied applicant, with his family, should enter a workhouse—should be supported there by a diet ample indeed in quantity, but from which the stimulants which habit had endeared to him were excluded—should be subjected to habits of cleanliness and order—should be separated from his former associates, and should be debarred from his former amusements. Wherever this experiment had been tried (at Bingham, at Southwell, at Cookham, and at Uley), it had succeeded; and the Commissioners of Inquiry had, as we have seen, recommended that its universal adoption should be rendered imperative by the legislature. We have seen also that parliament refused to follow this recommendation, but gave to the commissioners entrusted with the execution of the law power gradually to introduce and to enforce it.

Many parishes, however, were unprovided with workhouses, and very few possessed a population or funds sufficient to establish a workhouse, with proper officers and a proper classification.

The first business of the commissioners, therefore, was to exercise their power of uniting and organising parishes. They have now created 588 unions, or parishes administered by guardians, which, for brevity, we will also term unions, comprising a population, according to the census of 1831, of 12,182,031 persons — the parishes still ununited and unorganised consisting chiefly of those with some legal difficulties, still unremoved, excepted from the provisions of the amended law. In all these unions, with the exception of thirty-three, they have already procured the establishment of new workhouses, or the adaptation of the existing ones to the purposes of the Act.

Unhappily, one of the most important recommendations of the Commissioners of Inquiry has been disregarded. They recommended the erection or hiring a separate building for the reception of the children of a union. 'The children,' they say, 'if they enter a workhouse, quit it, if they ever quit it, corrupted where they were well-disposed, and hardened where they were vicious.' Either from the delight which all who have once tasted the sweets of building at the expense of others, have in large handsome elevations, or from the desire to save some additional expense in officers, or in compliance with the interested advice of architects, almost all the unions have placed the children under the same roof with the adults, an arrangement from which we fear disastrous results.

To all these unions and organised parishes, the commissioners have issued orders, containing, in fact, codes to govern them in the administration of relief, varying ac-

cording to the circumstances of the case, and relaxed and altered as those circumstances changed.

One of their earliest rules was the prohibition, after a given day, of relief in money to the able-bodied in the employment of individuals. But there was a great interval between this palliative, and the real remedy of the allowance system—the prohibition of outdoor relief to able-bodied males. This has been effected by what is called the 'Prohibitory Order'—the effect of which is to prohibit outdoor relief to able-bodied persons, who are themselves, together with their children, in health. It is subject to several exceptions, the main exception being that of able-bodied widows with children.

During the first of their years of office, the commissioners ventured to introduce the prohibitory order only in the Cookham union and the parish of Sandridge.* In the next year—the year ending August 1836—they had issued it to sixty-four unions.† From this time the prohibitory order appears to have been progressively introduced into the unions possessing proper workhouses, as they were ripe for its reception. In May 1841, it had been issued to 437 unions and organised parishes, containing, according to the enumeration of 1831, 7,372,021 persons, and comprising nearly all the unions except those in Middlesex, Yorkshire, Lancashire, Cheshire, and some of the Welsh counties.

In these large districts, therefore, all the great evils of

* First Annual Report, p. 28. † Second Annual Report, pp. 6, 7.

the old maladministration—relief without labour, the allowance system, the roundsman system, the labour-rate system, and outdoor parish employment—have, as far as respects able-bodied men and their families, been extirpated. The labourers, in a population of more than seven million persons, have been raised from a semi-servile state to freedom.

A more general estimate of the improvement effected, may be made by comparing the total amount of the poor rates in 1834 with the amount in 1840. The amount for 1834 was 7,511,219*l.*, that for 1840 was 5,110,683*l.*—the difference being 2,400,536*l.*, or nearly one-third. And this was effected under the pressure of bad harvests, hard winters, and manufacturing distress unexampled in severity and duration. The annual official expense by which this saving was effected, is less than 50,000*l.* a year, less than one-fifteenth part of the saving. And yet the expense of the Poor Law Commission has been a fertile subject of declamation!

We attach, however, little comparative importance to the pecuniary results of the Poor Law Amendment Act. If the difference between the rates of 1836 and those of 1840 had still been raised but merely to be thrown away, our prosperity would have been little impaired. Every year of a war costs ten times as much. The real evil of the profusion was the indirect evil—the real benefit of the economy is its indirect benefit. We are grateful to the legislature, and grateful to the commissioners, not for having saved 2,400,000*l.* a year, but for having stopped

the progress of the plague, and improved the morals of the people. These results cannot be expressed in figures or tables; nor can the evidence for them be stated, or even referred to in detail, within the narrow limits of an article. The appendices to the Seven Annual Reports of the Commissioners, and the Minutes of Evidence of the Committee of the House of Commons, which subjected the administration and effects of the Poor Law Amendment Act to a searching and elaborate investigation in 1837 and 1838, are the best sources of information. The general result may be stated to be, that the labourer, finding himself no longer entitled to a fixed income, whatever be his idleness or misconduct, and no longer restricted to that income, whatever be his industry and his integrity, becomes, as is always the case in a state of freedom, stimulated to activity and honesty by the double motive of hope and fear. Character has again become valuable.

There never was a better illustration of the great truths, that in morals, as well as in political economy, the laws of nature are wiser than those of man; and that the virtues of the mass of the people are as much at the mercy of the legislature as their wealth—equally capable of injury from rash interference, and of recovery when that interference has ceased. The surplus population—which had been so long the subject of complaint and of terror, and which farmers and landlords had vainly attempted to reduce by labour-rates and allotments, and statesmen by vast schemes of emigration—disappeared as if by magic. The labourers had become *redundant*—to use an expression which, seven

years ago, was unhappily familiar—partly because they were capriciously pent-up in parishes where the population was disproportioned to the area, partly because where there was work for them to do they had no motive to do it, and partly because they had ceased to reproduce the fund from which their wages were to come. When the bonds which confined them to their parishes were broken, they distributed themselves where their services were most wanted. When they were allowed the free disposal of their services, they endeavoured to make those services valuable. When the application of more efficient labour increased the employer's returns, and at the same time reduction of rates diminished his outgoings, he had a larger fund for the purchase of those services. The redundancy vanished with its causes. The able-bodied pauper is the result of art; he is not the natural offspring of the Saxon race. Unless his pauperism is carefully fostered by those who think it their interest to preserve it, he rapidly reverts to the *normal type*—the independent labourer.

We have now gone through the greater part of our task; we have explained the origin of the English Poor Laws—the abuses by which they were perverted, and the remedy which has been applied. We proceed to consider the principal obstacles with which the Poor Law Amendment Act has to contend, and the principal dangers to which it is exposed. To a certain extent we have done this already: many of the causes which produced the maladministration of the old are working to defeat the new law. There is indeed less ignorance among the educated classes in towns,

and among all classes in the agricultural districts; but the middle and lower classes in towns, who read nothing but newspapers, and converse only with one another, are probably in a worse state of mind on this subject now than they were ten years ago. Then, they were only ignorant—they are now ignorant and prejudiced; and in fact, except as respects the owners of estates, or the occupiers who are leaseholders, or reckon on being permanent tenants, a clear perception of the loss which ultimately follows the mal-administration of relief is no check to the unscrupulous. The inhabitant of a town is a transient occupant. If he is a publican, or a petty shopkeeper, or the owner of houses occupied by the poor, or a contractor for the supply of articles of relief, it may be worth his while to increase his custom or his rents by promoting the increase of rates, of which he pays only a portion, and can throw a part of that portion on his landlord. A manufacturer, by getting twenty per cent. of the wages of his workpeople paid out of the rates, may undersell and ruin rival establishments 500 miles off—may double his profits, may pauperise the surrounding districts, and retire with his fortune, and never hear of the misery which he has left behind. Again, in populous places, the relief of the poor, under the old law, employed a much larger number of paid officers than it does under the present system. In the seventeen unions in Lancashire that were in operation in 1839, the number of paid officers was reduced, on the formation of the unions, from 347 to 47.* Of course, these 300 persons are

* Fifth Annual Report, p. 30.

opposed to a system which has deprived them of profit and of power.

And, even in rural districts, the conviction that the old system was bad, is often one of those general principles which those who assert them try to avoid applying to their own case. Everyone, indeed, protests against returning to head-money, or payment of wages out of rates. But an indifferent workman, with half-a-dozen children from twelve to two years old, complains to the guardians that he cannot live on his wages. A shilling a head for his children would enable him to keep out of the workhouse —in it, he and his family would cost 24*s.* a week. The guardian of his parish begs that this one case may be an exception to the general rule. He prevails on his colleagues to ask the sanction of the commissioners; the commissioners see that it is a mere case of allowance in aid of wages, and refuse—and are accused of administering the law pedantically and harshly, and of preventing the guardians from doing as they like with what is called their own money! Again, a severe winter interferes with field-labour, and a farmer finds that ten of his men, to whom he is paying 10*s.* a week, are not worth to him more than 8*s.* Under the old system, the extra 2*s.* a week would have been supplied from the rates, or the men would have been discharged by their employer; and the parish would have sold them by auction, or sent them to the gravel-pit, or the roads, or the parish pound, and paid their wages out of the rates. Under the new system, either the farmer must keep them, at an immediate loss of 1*l.* a week, or the ten

men and their families, amounting probably altogether to fifty persons, must come into the workhouse, where they would cost 3*s*. apiece a week. The result is that, rather than incur the loss and the odium of adding such a burden to the rates, and the further loss that would follow from his example being imitated by his neighbours, the farmer keeps them on: his neighbours keep on their labourers; and perhaps 100 families, amounting to 500 persons, whom the old law would have made or retained paupers, are independent. But the farmer grumbles over his immediate loss, and sighs for the time when the tithe-owner and the shopkeeper helped to pay the wages of those whom he employed, and to keep waiting for him those whom he might think fit to dismiss and resume.

The great obstacle, however, to the success and to the popularity of the measure is political. The session in which the Poor Law Amendment Bill became law was the last in which this country has enjoyed a strong administration. The parliament which passed it never re-assembled—the ministry which carried it through was dissolved in less than three months. In the two subsequent parliaments the Whig majority could never be reckoned on for a session, and seldom for a month. The hostility of Tories and Chartists against their common enemy was stimulated by the constant proximity of success, and exasperated by constant disappointment. An obvious mode of party-warfare was to attack the Whigs through their greatest administrative measure. In agricultural districts, where the working of the law is notorious, and

where the higher classes, whatever be their political opinions, take an active part in it, the attempt failed. But in the larger towns an anti-poor-law agitator, who merely discarded veracity, had a tempting field. Only a small portion of the inhabitants of a large town take any part in the administration of relief. The higher classes do not like to sit at the same board with their shoemakers and grocers: the feudal connection of landlord and tenant, and the sympathy in agricultural and sporting pursuits, which unite the peer and the farmer, are wanting; and only a few among the tradesmen can find time for an unpaid office. The great majority of the population know nothing of the principles on which the law ought to be administered, or of the mode in which it actually is administered. They are the ready victims of misrepresentation, either of theory or of fact. On such a stage nothing is easier than to declaim on the sufferings of the poor and the duties of the rich—to accuse of cruelty every restriction by which relief is rendered less eligible than labour—to call workhouses 'bastiles,' workhouse diet starvation, and separation of the sexes impiety—to represent the expense of the commission as extravagant, its authority as unconstitutional, and its conduct as harsh—to call its mere existence an insult, and every exercise of its powers an oppression—and to envenom the invective by an appeal to the party-hatred which rages in provincial society.

That the Chartists should have snatched at such a weapon is not to be wondered at. They hate the Poor Law Amendment Act on the same ground on which they hate

the Whigs—the support which it gives to the existing constitution. But the conduct of a large portion of the Tory candidates is disgraceful to the party, and indeed to the English aristocracy. They have coalesced with their bitterest enemies in an attack on an institution which they know to be essential to the prosperity and morals of the country; and they have urged that attack by spreading statements which they know to be false, and principles which they know to be destructive. A few Whigs and Radicals have acted with equal dishonesty; and the result has been, that in many places the law has been deprived of an aid which is essential to the perfect success of every law, and to the moderate success of a law that is to be worked by the people themselves—the support of public opinion. In some towns, whole boards of guardians have been elected from among those hostile to the law, and who come forward for the avowed purpose of defeating it. In others, its friends and its enemies have met at the same board, and the administration of relief has been made the subject of continual struggle or mischievous compromise; or the better-educated have been driven away by the strife, and left the poor and the ratepayers a prey to the corrupt and the ignorant. The only check has been the authority of the commissioners, and their presence in the persons of their assistants.

And there is an apparent danger, though we trust not a real one, that even this check may be withdrawn or impaired.

Nothing could be more masterly than Lord Althorp's

management of the Poor Law Amendment Bill in the House of Commons—nothing more lucid than his development of its details, or more convincing than his enforcement of its principles. But his desire for an overwhelming majority betrayed him into one unhappy error. He allowed the Bill to be altered by inserting a proviso, limiting the duration of the commission to five years; feeling, as he said, no doubt that, at the end of the period, it would be made perpetual. He did not foresee that in 1839 the government would not be strong enough to propose anything to which half-a-dozen of their own supporters objected. The consequence, as we have seen, has been a mere annual prolongation of the commission, and an annual agitation by its enemies, in the hope that, under some accident, it may be left to expire, or that some less efficient check may be put in its place, or that it may be prolonged with less efficient powers of inspection and control.

We will briefly consider the probable results of any one of these three alternatives.

First, if the commission were suffered to expire, the whole legal administration of relief would remain fixed in the position in which it stood on the day when the regulator ceased to act. The parishes into which the new law had not been introduced would be excluded from it; the existing unions would be incapable of change. No errors in their formation or organisation could be corrected; no defects could be supplied. The rules issued by the commissioners to different unions are necessarily affected by

temporary peculiarities: these rules would remain unalterable. The rule, for instance, prohibiting outdoor relief, has now been issued to 437 unions, but subject, in every case, to be departed from with the sanction of the commissioners. That sanction could no longer be given, and no longer be retracted or varied. Many thousand administrative officers, though appointed by the guardians, hold their situations at the will of the commissioners. They would no longer be subject to the control, or entitled to the protection, of any responsible or of any impartial authority.

These would be the *legal* consequences of the expiration of the powers of the commission. The *practical* consequence, however, would be not rigidity but anarchy. The guardians are, in fact, irresponsible. The office is elective and gratuitous, and they act not individually, but as a board. 'The thing which has been, it is that which shall be.' The discretionary administration of the guardians would resemble the discretionary administration of the magistrates and overseers. In some places it would be perverted by the crotchet of a chairman, in others by the cunning of the farmers: in some boards the publican interest would prevail, and in others that of the owners of factories or of stocking-frames. In the boroughs which are infested by freemen, the relieving-officer would become an electioneering instrument, and boards of guardians would be elected to serve their own party; and where incendiarism has prevailed, the motive to profuseness would be terror.

Let it not be supposed that we undervalue the boards of guardians. We believe their establishment to have been an innovation as useful as it was bold; but we do not believe that any local irresponsible bodies can be trusted with the power of taking money from one portion of the community, and presenting it to another, with no supervision but that of auditors appointed by themselves.

Secondly, instead of suffering the commission to expire, it may be abolished, and a new control substituted in its place. This control may consist either in a new department of the Home Office, or in a new law, specifying all the details according to which the relief of the poor is to be administered, and appointing local and responsible authorities to enforce them. If the first expedient be adopted, and the duties of the commission be transferred to the Home Office, nothing whatever will be gained, except the empty concession of a change; and much will be lost. Under the present system, the commissioners and their assistants have been appointed, without distinction of party, solely on the ground of their fitness. No one can be utopian enough to suppose that such would be the case if an under-secretary of state were substituted for the board, and the assistant-commissionerships were part of the government patronage. Under the present system we have obtained the services of men whose whole thoughts and energies have been consumed in the anxious and unremitting labour of their duties. Could we hope for such devotedness from politicians who would consider their office as a mere step,

and a painful one, in the career of preferment? Under the present system, among all the calumnies with which the English board has been assailed, one reproach has never been whispered—they have never been accused of prostituting their influence for political purposes. Can we hope that a ministerial department would be free from such a stain?—or, if it were free from the stain, that it would be free from the imputation?

And, lastly, could any government support the unpopularity of a firm execution of the duties of the office? Could any government venture to control between 500 and 600 elective bodies—comprising all the most powerful members of the county constituencies, and the most active demagogues in the towns—to resist their jobs, to interfere with their favourite schemes; to dismiss their officers for improper subservience, or keep them in office for proper independence—to exact from them what it believed to be a sufficient expenditure, and restrain them from what it held to be profuseness? A government rash enough to assume such duties, if it attempted to perform them would ruin itself, and if it neglected them would ruin the country.

But mere neglect by the government, fatal as it would be, is not the most formidable danger. It must be recollected that we are legislating for years—perhaps for centuries. At present, indeed, the heads of the three great parties have too much knowledge and too much honesty to be guilty of the folly and the wickedness of replunging the country into pauperism. But are we sure that this feeling will continue? Who can tell what dangers and

what calamities may lie hid within what remains of the present century? Who can tell how intense may be the distress, how fierce the animosities, or how unscrupulous the factions that may be let loose upon us? No more attractive or more exciting watchword could be assumed by any party than that of kindness to the poor. If a powerful opposition raised this cry, could a ministry charged with the administration of the poor laws dare to resist it? If it were proclaimed by a ministry, could it be withstood by an opposition? And if the two great parties were bidding against one another for popularity, would philosophy or even experience be listened to? While the administration of the poor laws is vested in an independent body, unconnected with party—whose conduct reflects on the government neither popularity nor odium—we may expect that it will be, as we know that it has been, exercised for the general good. But if that administration is assumed by the executive, it must sooner or later—we fear very soon—be perverted by party interests. The restraints which alone render the workhouses a test will be denounced as inhuman, and will be relaxed. They will become vast establishments for the propagation of hereditary pauperism. Outdoor relief will be afforded to the able-bodied, and will again be a substitute for wages. Avarice, ambition, and vanity will again be permitted to usurp the name of benevolence; and oppression and fraud to call themselves charity. The abuses which seven years of unremitted struggle have subdued, but not extirpated, will revive with more than their former vigour; and the

Poor Law Amendment Act, like all its predecessors, will be worse than a failure.

Equally fatal would be the attempt to embody in an act of parliament the rules according to which the law is to be administered. Even if the population of England were homogeneous—even if there were not between town and country, and between different towns and different parts of the country—between Reading, for instance, Manchester, and Merthyr Tydvil, and between Sussex, Lincolnshire, and Northumberland—differences in occupation, in wages, in habits, in wants, and in morals, as great as between the inhabitants of Paris and of Berlin, or those of Holland and Bohemia—still the attempt to specify such details in a statute, and to enforce them in courts of law, would be preposterous.

The causes which give a title to relief cannot be expressed in any but very vague words. The terms 'emergency,' 'accident,' 'necessity,' and 'infirmity,' when employed by those who wish to misinterpret them, may be extended to the case of almost every conceivable applicant. We have seen that the local authorities, with whom the distribution of relief rests, are beset by motives to maladministration. The unremitting superintendence of the commissioners, devoting their whole attention to this one subject—framing and altering the language of their rules to meet every fresh evasion; armed with power to dismiss or to retain the paid officers who are to execute them; and present everywhere, in the persons of their assistant-commissioners—has enabled them to legislate with success for

the greater part of the unions which they have established. But even the commissioners have seldom ventured to lay down general rules. They have dealt with each union separately. They have appended to every order an elaborate explanation of its motives and its intentions; and they have relaxed and varied it wherever a change became expedient. A statute, containing a code for the regulation of outdoor and indoor relief, to be construed and enforced by courts of law, would be a parliamentary sanction to pauperism in all its forms. There is no tribunal in the world to whose judgment we would more reluctantly leave any questions the solution of which required general views of expediency, or indeed any enlarged views at all, than the English Common Law Judges. The narrow rules of construction with which they fetter themselves render them the worst possible expounders of written instruments. Even in the interpretation of wills, where they profess to follow the intention of the testator, they gradually formed rules of construction so elaborately irrational, that it was necessary, about four years ago, to pass an act totally reversing them. On poor-law matters their incompetence has been glaringly manifest. Knowing little of the details of poor-law administration, and absolutely nothing of the principles on which it ought to be grounded, wherever it has been possible to pervert an act of parliament they have done so.

Thirdly, the commission, instead of being left to expire, or being abolished, may be prolonged with less efficient powers of inspection and control. It would be impossible

to treat this part of the subject exhaustively, without considering in detail the different powers of the commissioners, and the consequences which in each case would follow if they were impaired. We will confine ourselves therefore to the alteration which, as it would be the most mischievous, is the most likely to be proposed by the enemies of the law—namely, the abolition, or, what would be nearly as fatal, the considerable reduction in number, of the assistant-commissioners. At present there are twelve assistant-commissioners, a number which, if the whole country were equally divided between them, and the population of England and Wales were evenly distributed, would give to every assistant-commissioner about fifty unions, comprising about 3,000 square miles, and about 1,400,000 persons.

It has been found, we believe, in practice, that about four unions a week are the utmost that can be visited, one day being devoted to correspondence, and another consumed on the longer journeys—the extreme points of a district being generally 100 miles apart. If, therefore, each union received equal attention, each would be visited four times a year. In proportion, however, as they recede from perfect administration, unions require more frequent attendance. We believe that some occupy the assistant-commissioners ten or twelve days each in the year; a single enquiry in a single union often lasts two or even three days, which, of course, is effected by reducing the attendance on the well-managed boards to one or two annual visits. We do not believe that this inspection is

adequate; but it is all that, with the present force of the establishment, can be given.

The Poor Law Amendment Act empowers the commissioners to delegate to their assistants all their own authorities, except that of issuing rules addressed, at the same time, to more than one union. This power, however, has not been exerted. The assistant-commissioners are empowered by the central board merely to inspect and report. They are the outward organs of the commission, and are as essential to it as eyes and ears are to a watchman. The routine duty of an assistant-commissioner, on arriving at the head-quarters of a union, is to attend the meeting of the guardians, and observe their proceedings; to look through their accounts, and ascertain how far their expenditure has been lawful; to inspect the workhouse, and the management and condition of its inmates; and to report to the commissioners the result of his enquiries. By these reports, and by these reports almost exclusively, the commissioners are aware of the state of the unions confided to them. If improper habits of expenditure prevail, they can check them by remonstrance, and, if that is not effectual, by positive order; if the auditor, or the relieving-officer, or the master or mistress, or schoolmaster of a workhouse has neglected his duty, or has been seduced or intimidated into deserting it, they can suspend or dismiss him. On the other hand, if the salaried officers of a union have resisted the maladministration of the guardians, the commissioners can protect them; and, what is practically more beneficial, the knowledge, on the part of

all parties, that their proceedings are open to inspection, prevents abuses from arising.

In the absence of this inspection, the commissioners might issue their orders from Somerset House; but they would have no means of ascertaining how far they were obeyed. No more attention would be paid to them than to the Queen's proclamation against vice and immorality. Again, when complaints are made to the commissioners, it is through the assistant-commissioners that they are investigated. Where officers are to be appointed, the assistant-commissioner frequently attends, and gives the aid of his experience and impartiality in determining the relative merits of the candidates. When the guardians are in doubt as to their proceedings, he gives direct advice; or, if they refer the question to the commissioners, he gives to the commissioners the advantage of his local knowledge; and, above all, he is the disseminator of good principles. His whole time is spent in watching the different effects of different modes of relief. A few years of such experience must have exhibited to him the results of every form in which it can be administered. He can warn the guardians against the dangers of plausible expedients, and predict the advantages which will ultimately result from a conduct, which, at its commencement, may be unpromising.

These are high functions; but it would be absurd to hope that they can be popular. The best-managed boards scarcely see the assistant-commissioner. He visits them once or twice a year, expresses his approbation, and

disappears. The worst-managed boards see him frequently, but as a spy and a reprover. He comes to defeat their jobs, and restrain their extravagance: he procures, perhaps, the dismissal of an incompetent schoolmaster—the chairman's protégé—and the retention of an auditor obnoxious from his vigilance. In the greater part of the unions, where the views of different guardians differ, each party appeals to the assistant-commissioner. He is bound to give his opinion, and those to whom it is unfavourable accuse him of being the tool of a party. We believe that if an enquiry were made into the state of the unions and parishes which have petitioned against the assistant-commissioners, the places which have denounced them as useless would be found to be precisely those in which their services were most essential.

We have now performed our undertaking, so far as our limits have allowed us. We have shown that the English Poor Laws may be divided into three classes; the first extending from the middle of the reign of Edward III. to the end of that of Elizabeth; the second from the death of Elizabeth to the middle of the last century; and the third from the middle of the last century to August 15, 1834, the date of the Poor Law Amendment Act. We have shown that during the first period the poor laws were only parts of a systematic attempt to bring back villenage, and confine the labourers to their parishes, and force them to work there for such wages as their superiors thought fit; and that this attempt failed. We have shown that during the second period the object was the

relief of the impotent, the able-bodied being considered subject to the provisions, not of the poor laws, but of the vagrant laws; and that during this period the law appears to have been successful. We have shown that during the third period an attempt was made to give to the labourer a security incompatible with his freedom; to provide for him and his family a comfortable subsistence at his own home, whatever were his conduct, and whatever were the value of his labour. And we have shown that this attempt succeeded in what have been called the pauperised districts, and placed the labourer in the condition, physically and morally, of a slave;—confined to his parish, maintained according to his wants, not to the value of his services, restrained from misconduct by no fear of loss, and therefore stimulated to activity and industry by no hope of reward. We have stated the principal provisions of the Poor Law Amendment Act, by which this fatal system was corrected; we have stated the mode in which that act has operated, the obstacles by which it has been impeded, and the principal dangers to which it is exposed.

CHAPTER VII.

IN November 1830, a few days after he had received the seals of the Home Office, Lord Melbourne requested me to enquire into the state of combinations and strikes, to report on the state of the law, and to suggest improvements in it.

I begged for the assistance of a common lawyer, and Mr. Tomlinson was associated with me.

We circulated questions, examined witnesses, and in 1831 sent in a report, which must still be in the archives of the Home Office.

Ten years after, in 1841, when I was acting as a commissioner in the enquiry respecting the condition of the hand-loom weavers, I was convinced that one of the causes which depressed them was their exclusion, by combinations, from the skilled trades. I introduced, therefore, into the Report on the Condition of the Hand-loom Weavers, the most material portions of the report made by Mr. Tomlinson and myself on combinations and strikes.

I now reprint it.

Unhappily, the lapse of thirty years has not diminished its interest.

The law remains as defective as it was in 1831. The combinations are as tyrannical, as unresisted, and as mis-

chievous as they were in 1831. I still believe that the remedies suggested by us in 1831 would be useful, perhaps effectual. And, notwithstanding a disappointment which has lasted for thirty years, I still cherish the hope that a Home Secretary will be found wise enough and bold enough to grapple with this tremendous evil: and I believe that he will find in this Essay useful suggestions.

COMBINATIONS AND STRIKES.

As the object of the combinations among workmen is the increase of their wages and the general improvement of their condition, and as they have adhered to them for many years, at the expense of great and widely-spread occasional suffering, at a sacrifice of individual liberty, such as no political despotism has ever been able to enforce, and with a disregard of justice and of humanity, which only the strongest motives could instigate, it may be supposed that combinations have been found to produce the benefits for which such enormous evils have been voluntarily incurred. We believe, however, that, with a few exceptions, the tendency of combinations has been precisely the reverse of their object, and that, as hitherto directed, they have led to the positive deterioration of the wages and of the condition of those who have engaged in them, and of the far more numerous body who are excluded from them.

The purposes for which combinations are generally

formed are four:—1st. Withdrawing the workmen from the master's control. 2ndly. Rendering the wages of each class of workmen equal, as between the different members of that class, instead of being dependent on their comparative diligence, strength, and skill. 3rdly. Raising wages, or, what is the same, preventing their fall. And, 4thly, in order to effect the other objects, limiting the number of workpeople in the best-paid classes.

The general basis is intimidation and a system of annoyance or injury to the property or persons of those who oppose, and in most instances of those who do not assist in the combination. As respects masters, the injury is generally confined to property, though cases have occurred even in England, and more frequently in Scotland and Ireland, of masters opposed to particular combinations having been wounded, maimed, or assassinated. These, however, are comparatively rare occurrences. The usual mode of attacking a master is in his property, by means of a strike—that is, a refusal to work for him, and a determination to prevent any other person from doing so. By this means his capital is rendered useless, his machinery spoils, his engagements are unfulfilled, and, if the combination can persevere, he must submit or abandon his business.

The obnoxious workmen, having little property, suffer in their persons the punishments rising from simple assaults to blinding with vitriol and beating to death.

Some combinations are mere agreements among large bodies of workmen as to their conduct in one or two particulars; others are associations for a temporary purpose, which terminate when the occasion has passed. The

most numerous and most important are the permanent unions, separately formed in almost every trade, by comparatively small portions of the workmen employed in it. The affairs of the combination are managed by a committee, appointed directly or indirectly by the whole body—directly, where the constituent body is small, indirectly where it is large; each factory or shop, in the latter case, appointing delegates, who themselves elect the committee.

The committee, whether directly or indirectly elected, and whether appointed for temporary or for permanent purposes, appears always to exercise over all the members of the confederacy unquestioned power. For the purposes of detection it is omnipresent; for those of punishment, unlimited in power and in ferocity. It directs against any resisting workman the moral force of the public opinion of his class, and the dread of bodily sufferings more severe than those which any civilised tribunal inflicts. One of its duties is to lay down the regulations of the combination. Three rules are common to almost all combinations:—1st, that each member shall pay a certain weekly or monthly payment towards the expenses of the combination; 2ndly, that no member shall work under a stated price; and, 3rdly, that no member shall work in company with any workman not a member of the combination, or for any master that disobeys its orders. To these are generally added—1, laws to keep down the number of persons in the trade, by prohibiting the employment of those who have not served an apprenticeship, and by limiting the number of apprentices, either by confining each master to a given number, or by absolutely forbidding anyone to be

received as an apprentice unless he be a son, brother, or nephew of a journeyman; 2, laws either prohibiting piece-work, and requiring every workman to be paid by the day, and at the same rate, or, where piece-work is permitted, forbidding any workman to earn more than a given sum, or to do more than a given amount of work in a day or a week; 3, laws prohibiting a master from discharging any workman without the consent of the whole body, and, in many cases, requiring him to take into his employment as new workmen those only whom the committee may choose to send to him. Some special regulations generally follow, adapted to the peculiarities of each trade, the object of the whole being to enable the combined body to fix the price of their labour and to escape the control of their master, or even to reduce him to subservience to themselves.

A combination frequently succeeds in effecting its immediate purpose, when the inactivity of the workmen in combination can produce the further effect of throwing out of employment other and more numerous sets of work-people, or render useless a large amount of fixed capital. These two circumstances render the spinners so formidable to all other persons engaged in the cotton manufacture. A spinning factory worked by 700 or 800 persons does not require more than 50 or 60 spinners. Supposing the capital engaged in it to be about 100,000*l*., which is a probable estimate, at least 75,000*l*. of that capital is fixed in the buildings and machinery. A strike by the 60 spinners renders useless, during its continuance, all this vast

aggregate of human and material power. If, as is frequently the case, a power-loom factory is connected with the spinning factory, the influence of the strike extends still farther—and farther still if there are also dependent on it bleaching-works and print-works: 50 or 60 individuals can then control thousands of workpeople and hundreds of thousands of property.

We shall preface our suggestion for the improvement of the law respecting combinations by a short statement—1st, of the principles on which, we believe, that any legislation on that subject ought to be founded; and, 2ndly, of the manner in which it has been dealt with by the law of England.

We believe that the property of the working man in his strength and skill is as real, and ought to be as much respected by the law, as any other property which the law recognises.

We believe that the right of the working man to employ that property in the way which he considers most for his interest, so far as he does not interfere with the exercise of a like free will on the part of another, is a right as sacred as any right for the protection of which laws are maintained.

We believe, therefore, that it is the duty of the state to protect that property and that right, and that it may be guilty of a breach of duty by acts of commission or of omission. By acts of omission, if it does not protect the labourer from injury on the part of those who assume to dictate to him what he shall do and what he shall not do;

by acts of commission, if it assume itself to dictate to him, and to force him to pursue or to abandon a given proceeding, not on the ground that he is interfering with the free will of another, but because his conduct may be detrimental to himself, or to his master, or to the general wealth of the society. We believe, in short, that in this, as in almost every other matter, the duty of the government is simply to keep the peace, to protect all its subjects from the violence and fraud and malice of one another, and, having done so, to leave them to pursue what they believe to be their interests in the way which they deem advisable.

The following outline of the law of England as respects combinations will show that we have been guilty of both these errors; that we have attempted to do much that was unjustifiable, and have left undone, and now leave undone, almost all that we ought to do.

The common law of England considers all conspiracies as misdemeanors, and on indictment and conviction by a jury, as punishable by fine and imprisonment, and by the further liability to give sureties at the discretion of the court for the future good behaviour of the criminal. And it includes, under the general head of conspiracy, all confederacies where either the purpose or the means are unlawful, whether the object be to effect a lawful purpose by unlawful means, or an unlawful purpose by any means whatever; and, according to high legal authority, all confederacies to prejudice a third person.* The law allowed

* Rex *v.* Journeymen Tailors of Cambridge, 8 Mod. 11. Rex *v.* De

any labourer, not being a villein, to refuse to work more than a certain time, or for less than a certain rate of payment, or on any other conditions which he thought fit to require;* and it allowed the master to impose what conditions he thought proper; but the instant the labourers or the masters attempted to make common cause,† the instant the members of either body agreed to support one another in their requisitions, the law held the purpose of the agreement to be prejudicial to third persons, or injurious to trade in general, and therefore an unlawful agreement; or, in other words, a conspiracy, and therefore a misdemeanor; and the parties engaged in it might be indicted either as having conspired among themselves, or together with other parties unknown.

It did not matter whether the acts by which the objects of the agreement were to be effected were or were not in themselves unlawful. The crime consisted in the agreement itself, and an indictment might be sustained by simply proving the agreement, without showing that a single act had been done to carry it into effect; or by proving various acts done by the parties tending to one common end, from which a common design, and an agreement to effect that design, might be inferred. In the indictments at common law accordingly there are found general charges

Berenger, 3 M. and S. 67. Rex *v.* Fowler, 1 Earl, P. C. cap. 11, s. 11. 1 Hawkins, P. C. cap. 72, s. 2. Clifford *v.* Brandon, 2 Campbell, 369. Rex *v.* Eccles, 13 East, 230, in notes. Regina *v.* Best, Lord Raymond, 1167 S. C. 1 Salk, 174.

* 8 Mod. 11, *ubi supra.* Rex *v.* Morley and others, 6 T. R. 636.

† Rex *v.* Parsons, 1 W. Blackstone, 392.

of conspiracy to raise the wages or to shorten the hours of labour of the confederates or of others, or to dictate to their employers the mode of carrying on their business; and in other counts in the same indictment are found more detailed charges of conspiracy evidenced by simultaneous refusals to work, by solicitations of others to join in the conspiracy, or to form distinct conspiracies, by subscriptions, or by solicitations of subscriptions, or by other acts innocent in themselves, but considered proofs of an illegal agreement; and other counts are added, charging the parties with acts illegal not only in their purpose but in themselves, such as assaults, riots, or the exciting others to commit breaches of the peace.*

Proceeding on questionable grounds of public convenience, the common law erected into crimes acts in themselves perfectly innocent, and subjected acts really criminal to punishment, on account not so much of their own qualities, as of the purposes to which they were subservient. It was oppressive, and, like all oppressive laws, demoralising; men's ideas of right and wrong were confounded, when they were told that each man's separate attempt to raise his own wages was blameless, but that any concerted effort was a crime; that a mere agreement to make such

* See printed precedents of indictments in the Crown Circuit Companion, 127–134. Indictment against Journeymen Leather-dressers, 4 Wentworth, 100; against Smiths, ibid. 113; against Labouring Curriers, ibid. 120; against Lamplighters, 6 Wentworth, 375; against Wheelmakers, 3 Chitty, Crim. Law, 1163; against Serge-makers, ibid. 1166; against Weavers, ibid. 1167; against Rope-makers, ibid. 1170. And see 2 Chitty, Crim. Law, 506; Rex *v.* Philips, 6 East, 464.

an effort was a crime, and that an assault or a riot exposed its actors to far severer punishment when used as evidence of a combination to raise wages, than when regarded as merely endangering the persons and property of their fellow-subjects.

But the law was not only oppressive, but ineffectual; not in its description of the offence, or in the evidence which it required—in these respects it was comprehensive and manageable—but in its mode of procedure. That was the dilatory, expensive, and troublesome process of indictment, a proceeding generally felt even by those who have leisure enough and funds enough to be able to resort to it, to be a greater evil than submission to the conduct which it might enable them to punish.

We shall not attempt to trace the progress of the statute law on combination. The titles of the different acts on this subject will be found in the first section of the 5 Geo. III. cap. 95, where their mere enumeration occupies six pages. Most of them are confined to particular places or particular trades. One of the most important was the 12 Geo. I. cap. 34. It was intended to protect the woollen manufacture against combinations among weavers; and after declaring, in accordance with the common law, all agreements by societies of weavers or others for regulating prices, advancing wages, or lessening hours of work to be illegal, it subjects all persons entering into such agreements, or attempting to put them in force, to imprisonment and hard labour for not exceeding three months, on conviction, not, as at common law, through an indictment,

but *on summary process before two justices.* The assaulting or abusing masters for non-compliance with rules attempted to be imposed on them by the men, or the sending threatening letters to them, was made a felony punishable by seven years' transportation.

The 22 Geo. II. cap. 12 extends the provisions of this Act to persons employed in the manufacture of hats, silk, mohair, fur, hemp, flax, linen, cotton, fustian, iron, and leather.

The great statute against combinations was the 39 & 40 Geo. III. cap 106; which extends to workmen engaged in every manufacture. It contains, like the previous Act of Geo. I., a declaration of the illegality of all agreements (except of course between masters and their own workmen) for raising wages, lessening labour, preventing masters from employing whom they pleased, or 'for controlling the conduct, or in any way affecting any person carrying on any manufacture or business in the conduct or management thereof.' It punishes workmen parties to any such agreement, or endeavouring to carry it into effect, or attempting to prevent others from taking employment, or inducing them to quit it, controlling masters in engaging men, or, without reasonable cause, refusing to work with any other workman, attending meetings for such purposes, or inducing others by summons or intimidation or persuasion to attend such meetings, with imprisonment for three months on summary conviction before two justices. It declares contributions to such purposes forfeited, and imposes fines on all persons contributing or collecting

contributions. Combinations among masters are declared equally illegal.

This was the last English Act directed against combinations, before the great alteration of the combination laws in 1824, and it appears, probably in consequence of the facility afforded by the powers of summary conviction, to have rendered the common law remedy by indictment almost obsolete. It did not, however, oppose combinations with much success, for they increased, both in extent and in violence, during the twenty-four years that the 39 & 40 Geo. III. was in force, more rapidly than during any previous period. At length, in 1824, Mr. Hume obtained a committee to enquire, among other things, 'into the state of the law and its effects, so far as relates to the combination of workmen and others to raise wages, or to regulate their wages and hours of working.' The committee sat for three months, and collected much valuable evidence; the result of which they embodied in eleven resolutions, of which the following are the most material:—

'That the laws have not only not been efficient to prevent combinations, but have had a tendency to produce mutual irritation and distrust, to give a violent character to combinations, and to render them highly dangerous.

'That the statutes which interfere as to the rate of wages or hours of labour between masters and workmen should be repealed, and that the common law under which a peaceable meeting of masters or workmen may be prosecuted as a conspiracy should be altered.

'That it is absolutely necessary to enact a law which may efficiently, and by summary process, punish either workmen or masters, who, by intimidation or violence, interfere with the perfect freedom which ought to be allowed to each party of employing his labour or capital in the manner he may deem most advantageous.'

In pursuance of these resolutions, the 5 Geo. IV. cap. 95 was passed.

The first section repeals all the existing statute law on combination.

The second section alters the common law, by enacting that persons combining to advance or fix wages, or alter hours or quantity of work, or to induce others to quit their service or return their work, or combining (not being hired) to refuse to work, or to regulate the management of any business, shall not be subject to any punishment at common or statute law. The fifth section punishes violence, threats, and intimidation, by imprisonment with or without hard labour, for not exceeding three months.

A summary mode of procedure before two justices, and powers of conviction on confession or proof on oath by two witnesses, are then given, and it is further enacted, that no appeal shall be allowed against any conviction under the Act; but no master, or the father or son of any master, in *any* trade or manufacture, can act as justice under the Act.

The Act of 1824 cannot be said to have had a fair trial, for it was not allowed to continue in force for a single year. In 1825 the 6 Geo. IV. cap. 129, the Act now in force respecting combinations, was passed.

That Act, after reciting that the provisions of the 5 Geo. IV. had not been found effectual, 'That combinations are injurious to trade and commerce, dangerous to the tranquillity of the country, and especially prejudicial to the interests of all who are concerned in them;' and that it is 'expedient to make further provision, as well for the security and personal freedom of individual workmen in the disposal of their skill and labour, as for the security of the property and persons of masters and employers,' by its first section repeals the 6 Geo. IV.

The second section repeats the repeal of the previous statute law on combinations.

The result of these two sections would have been simply to revive the common law on combinations, in its wide and, as we think, oppressive extent, but also with its inconvenient procedure.

The third section therefore subjects certain acts, nearly the same as those punishable by the 5 Geo IV. to summary punishment. As it is the law now in force, we extract it. It enacts that—

If any person shall by violence to the person or property, or by threats or intimidation, *or by molesting or in any way obstructing another, force or endeavour to force* any person to depart from his hiring, employment, or work, or to return his work before the same shall be finished, *or prevent or endeavour to prevent any* person not being hired or employed from accepting work or employment; or if any person shall use or employ violence to the person or property of another, or threats or intimidation, *or shall molest or in any way obstruct another for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty, or on*

account of his not belonging to any particular club or association, or not having contributed or having refused to contribute to any common fund, or to pay any fine or penalty, or on account of his not having complied or of his refusing to comply with any rules or regulations made to obtain an advance of wages, or to alter the hours of working, or to alter the quantity of work, or to regulate the mode of carrying on any business, or the management thereof; or if any person shall by violence to the person or property of another, or by threats or intimidation, *or by molesting or in any way obstructing another*, force *or endeavour to force* any manufacturer or person carrying on any business, to make any alteration in his mode of regulating, managing, conducting, or carrying on such manufacture or business, *or to limit the number of his apprentices, or the number or description of his journeymen, workmen, or servants*; every person so offending, or aiding, abetting, or assisting therein, being convicted thereof in manner hereinafter mentioned, shall be imprisoned only, or shall and may be imprisoned and kept to hard labour, for any time not exceeding *three* calendar months.

We have printed in italics the new matter contained in this clause.

The fourth and fifth sections exempt from punishment at common law persons meeting for the *sole* purpose of determining the wages which the persons *present at such meeting* shall demand or pay, or the hours or time of working, and also persons entering into an agreement, verbal or written, *among themselves*, as to the wages which they shall demand or pay, or the hours or times of working.

By the seventh section justices of the peace, on information on oath, may summon a person charged with an offence under the Act, or, if they think fit, issue a warrant, without previous summons, for his apprehension, and on

his appearing, or on *proof of his absconding*, may convict him, on confession or on the oath of *one* or more witnesses.

The twelfth section gives to every person convicted under the Act an appeal to the quarter sessions, and directs the execution of the judgment to be suspended, on his own recognisance, with that of two sureties in 10*l.* for the prosecution of the appeal.

The thirteenth section enacts that no justice, being also a master in the particular trade or manufacture, concerning which an offence is charged, shall act as justice under the Act. The previous act extended (as we have seen) the prohibition to all masters in any trade or manufacture, and the father or son of any master.

A form of conviction is added, in which the *name* of the person convicted must be inserted.

We have already stated that the 6 Geo. IV. has revived the common law against combinations, with this exception, namely, that it exempts from punishment persons meeting to determine the wages or hours of work which the persons present at the meeting shall require or give, or entering into an agreement among themselves for such purposes.

All other combinations or agreements to the prejudice of third persons are still conspiracies, and, on indictment, punishable at the discretion of the court by fine and imprisonment, to which, in the case of an assault in furtherance of a combination to raise wages, the court can, under the 9 Geo. IV. cap. 31, sec. 25, add hard labour for any term not exceeding two years.

We are inclined to believe that the state of the law in

this respect is not generally known. It seems to be supposed that combinations are not punishable unless accompanied by violence, intimidation, or molestation. This is true, as respects the statutory punishment, but not as respects the far heavier punishment awarded by the common law. All meetings or agreements whatever for the purpose of affecting the wages or hours of work of persons not present at the meeting, or parties to the agreement, are conspiracies. So are all agreements for controlling a master in the management of his business, in the persons whom he shall employ, or the machinery which he shall use. So of course are all agreements not to work in company with any given person, or to persuade other persons to leave their employment, or not to engage themselves. In fact there is scarcely an act performed by any workman as member of a trades' union, which is not an act of conspiracy and a misdemeanor.

The material points, besides the re-introduction of the common law, in which the 6 Geo. IV. differs from the 5 Geo. IV., are the extension in some measure of the statutory offence, increasing the punishment from two months' imprisonment to three, and enabling a conviction on the oath of a single witness, and also on proof that the person charged is absconding.

But it gave to the party convicted an appeal to the quarter sessions, and directed the execution of the judgment to be in the meantime suspended.

More than fifteen years have now elapsed since the

6 Geo. IV. was passed. A time sufficient to show how far the provisions of that Act have effected the recommendation of the Committee of the House of Commons on the subject. 'That the most effectual security be taken that legislative enactment can afford that, in becoming parties to any associations, individuals be left to act under the impulse of their own free will alone; and that those who wish to abstain from them should be enabled to do so, and continue their service or engage their industry on whatever terms or to whatever master they may choose, in perfect security against molestation, insult, or personal danger of any sort whatever.'

A general opinion that this purpose had not been effected, occasioned, in 1838, the appointment, by the House of Commons, of a Select Committee to enquire into the 'operation of the 6 Geo. IV., and generally into the constitution, proceedings, and extent of any trades' unions, or combinations of workmen, or employers of workmen in the United Kingdom, and to report their observations thereon to the House.'

The enquiries of this Committee were directed almost exclusively to Ireland and Scotland, and even in those countries scarcely extended beyond Dublin, Belfast, and Glasgow. And, as unfortunately has often of late been the case with Committees of the House of Commons, they were unwilling or unable to perform that part of their duty, which consisted in observing on the evidence, but separated without a report. The evidence, however, is printed, and enables us to judge how far, in the places to

which the enquiries of the Committee extended, the 6 Geo. IV. has succeeded in giving freedom to the workmen. But, as we have already stated, England was almost excluded from the enquiry, only four witnesses connected with that country having been examined, Mr. Foster, the stipendiary magistrate of Manchester, and Doherty, M'Williams, and Arrowsmith, who, as working cotton-spinners, took an active part in the great strike in Manchester in 1829.

The three last-mentioned witnesses affirmed that, at the time when they were speaking, that is, in the summer of 1838, labour was free in Manchester, and that a person who chose to make his own bargain with his employer might do so without fear of injury or annoyance. Their evidence, however, contains admissions inconsistent with its general tendency. Thus W. Arrowsmith says, that when men have been found to misrepresent their master, 'we give the men a reprimand, and will not allow them to make any resistance' (3773). Doherty, that if the men complain of any grievance, their statement is enquired into, 'and if not correct, the men are ordered to continue their work' (3401). And he mentions an instance, in which, after several discussions in the ruling committee, the men at a particular mill 'were ordered back to their work' (3417). He admits that, if the strike of 1829 had continued longer, it probably would have manifested itself in violence and bloodshed (3418, 19, 20). He admits that, if a man were found working at an under price, an appeal would be made to the combination to

know whether something could not be done to stop it (3488). He is asked whether men who belong to the union associate with those who do not? and answers, Yes; but when pressed by the further question, 'Do they walk with them or *converse* with them?' he is forced to reply, 'No. I think it is very rare' (3609, 3610).

Mr. Foster's evidence, though expressed in very guarded terms, is more explicit.

We will extract some of its more material passages:—

3219. Were you acting officially, as a magistrate, in the year 1829?—I was; I was appointed in the year 1825.

3220. Can you state any instances of violence that occurred in that year?—There were about that period several cases of partial violence, arising out of obstructions thrown in the way of new hands going to their work, in the place of those who had turned out.

3229. Did these assaults prevent the knobsticks from persevering?—In many instances it made it very difficult, and in some instances the master stated it was quite impossible for them to replace the old hands with new hands.

3259. I collect that it is your opinion, with the opportunities of a knowledge of the facts you have, that the freedom of individual labour is not interfered with by combination in Manchester?—I cannot say that; the system which has prevailed, where there has been a strike, of watching the parties employed at particular mills, has undoubtedly had the effect of deterring parties, not only by means of persuasion, but also of intimidation, from working.

3260. Then, on the contrary, your opinion is, that the freedom of individual labour has been interfered with?—In that way.

3261. That is by persuasion, which can hardly be said to interfere with individual freedom, and by intimidation, which certainly does interfere with it?—Exactly.

3262. But that intimidation has never, to your knowledge, been worked out to the extent of violence to the parties?—There have

been many cases of assaults which have been clearly connected with the determination to prevent the new hands being employed where the old ones had turned out.

3263. To work out the system of intimidation?—Yes; that was the object of it.

3264. Then to that extent, free labour has been interfered with in Manchester by intimidation; all these measures necessarily implying intimidation, and actual intimidation, by the assaults that took place?—*There have been cases of assault, as I have stated, but free labour has been more generally interfered with by the general intimidation which parties are under by seeing that the mills are watched from morning to night, and by their apprehensions that personal violence may be offered to them.*

This evidence we think establishes that, even in Manchester, labour is not substantially free, and all the information that we have received leads to the belief that in most of the manufacturing districts the workman who resists a combination exposes himself to equal or to still greater danger and insult. A portion of the evidence of Mr. Henry Ashworth, one of the most eminent manufacturers in Lancashire, is so instructive that we extract it:—

The operative spinners, about forty of the men, turned out in 1830, and thereby threw out of employment about ten times their own number, chiefly women, children, and young persons, who had not the slightest interest in the dispute.

The dispute, such as it was, scarcely deserved to be called a pecuniary one, inasmuch as the sum was less than 2*d.* per spinner per week upon wages averaging above 30*s.* per week. The fact was, we refused to lay aside our accustomed mode of reckoning and adopt one which was proposed to us from the union.

Our works being at a stand, we advertised for other spinners, and they soon began to throng to the mill from distant places, but chiefly from Manchester, where a strike had recently terminated, leaving many of them unemployed.

The roads for many miles around our mill were piqueted by relays of unionists, who paraded night and day, and being armed with large sticks and other weapons, they deterred every person who attempted to pass if he had the resemblance of a spinner; and on one or two occasions they stopped the public coaches on the road from Manchester, examined the passengers, selected those whom they conceived to be spinners, and drove them back to Manchester, using great violence in many cases: yet, amidst all this confusion, we were unable to establish a single case of assault against any one, no constables being at hand, and the public not daring to face the odium of interference.

Our mills and premises are situated at the junction of three townships, to all of which we pay the police rates. We sought the protection of the constables, but without success. In two of the townships the office was evidently filled by persons who appeared to consider it a local duty affixed upon them, for which there was no sort of emolument to be received beyond the casual payment of fees for the service of any legal process. These officers, being incompetent, were unwilling to take any steps for preserving the peace, although they knew that it was broken every day. In the other township, that of Little Bolton, the constable, when applied to, tendered his services with apparent sincerity, and engaged to provide a proper escort to the mill for such hands as might call upon him for protection; but we afterwards discovered that he had allowed a spy belonging to the unionists to remain in his house, who apprised that body when applications were made, and thus enabled them to intercept the parties. Thus by collusion the constabulary power, for the expense of which we are largely rated, was turned against us. We complained to the magistrates, but got no redress. They merely observed that they considered it very unhandsome behaviour in a public servant.

In spite of these annoyances we at length succeeded in procuring a fresh supply of hands. The unionists then became so much exasperated that a detachment of them, under the direction of what was called a destruction committee, entered our premises at midnight, ransacked the dwelling-houses of the workpeople, and beat them with bludgeons in a most barbarous manner; they also broke

a great many windows, and did other damage to our property. Indeed, they manifested so much vindictive violence that no one could have estimated the extent of life and property which would have been sacrificed had the rioters not been deterred by the ringing of an alarm bell, which caused them to disperse.

We were repaid by the county treasurer for some portion of this loss and damage; but we sustained a heavy loss from the interruption of our trade, and those of our workpeople who were not interested in the strike endured great privation from being thrown idle. Had this neighbourhood been in possession of a constabulary force strong enough and duly authorised to put down the system of piqueting, and give due protection to the willing workers, this vain contest might perhaps not have been entered upon, or, if it had, its duration would have been much shortened.*

This is a very painful state of things, miserable to the labouring classes, whose freedom is destroyed, and whose properties and persons are endangered, who are forced to choose between want and outrage, disgraceful to the governing body in the state which leaves untried any probable remedy, and alarming to all, however remote from the scene of outrage, who think of the purposes to which organised mobs may be turned.

But we lament to say that the state of things in Scotland, so far at least as Glasgow is a sample, is still more distressing and still more formidable. The tyranny of the combinations appears to be better established there, to be more systematic and more ferocious, and to inspire, as might be expected, greater and wider intimidation. This will appear from the following extracts from the evidence taken by the Committee of 1838:—

* First Report of Constabulary Commissioners, p. 162.

Mr. Houldsworth, Cotton Manufacturer, Glasgow.

4. Have any combinations existed at any period amongst the operatives in the cotton manufactories at Glasgow?—Yes, ever since I became connected with trade, in the year 1827. They are conducted by a committee of the workmen, chosen from delegates that are sent from each of the cotton-mills in the neighbourhood.

17. By what means do the operatives carry their laws into effect?—Generally it finishes by a turn-out—a strike.

18. Suppose an individual operative does not agree to follow their directions—what happens in that case?—He is frequently maltreated.

19. In what way?—Threatened that if he does not give up his employ or go away he will be abused, and if he should still persist, in many instances he gets attacked, knocked down, vitriol thrown upon him, or otherwise. In 1832 I was called upon, about 10 o'clock at night, to come down to our houses where our workmen were residing, in consequence of one of our workmen having been attacked at night; his head much cut; his face bruised.

23. Were there any particular circumstances connected with a strike that took place in 1832?—We had continually round the mill a large number of guards, guarding the premises; those guards were put on by the workmen.

24. For what purpose?—In order to prevent any new workmen from coming to our mill to get work.

25. What steps did they take to prevent them?—They accosted any man that had the appearance of a spinner, and said everything they could to prevent him going to work with us; they threatened him, and in some instances the men were attacked.

26. Were they injured?—In the case that I before mentioned, a man of the name of Currie was very much abused one night; his head cut and bruised.

27. Did those guards prevent any man from coming?—Sometimes they had that effect.

28. How did the strike that took place in 1832 terminate?—

It terminated in the men yielding a certain point to us, and our yielding the principle of paying that they wished. It was an individual strike. We were the only party who had a strike in 1832 in Glasgow connected with the cotton trade.

29. What particular circumstances were connected with the strike that took place in April 1837?—There was one circumstance occurred of a man of the name of Arrol, whom we had employed as a spinner: he was followed by a large crowd from our mill door, a crowd of about 100 people; he fled from them along the river-side towards Glasgow; they called names after him, and I believe some stones and dirt were thrown; *he took refuge in a shop, but the shopkeeper turned him out, as he was afraid of his property being destroyed.* He was there rescued by the policemen and put on board the ferry-boat, and taken across the river Clyde to be out of danger. At this time the crowd had amounted to 200 or 300, and his own impression was that, had they not been prevented, his life would have been taken away.

30. Was John Smith in your employ who lost his life?—Yes.

31. What were the circumstances of that case?—John Smith formerly belonged to the workmen's union, and had broken off from that union, and came to work with us on the master's terms during the turn-out of 1837, and he was shot in the night of July 22, 1837, when he was walking with his wife in the streets of Anderson, near our works.

36. Were the workmen who did not join the combination generally in a state of apprehension of receiving personal injury for not joining?—Yes, they always stated so to us.

37. Was this apprehension general throughout persons engaged in the cotton manufacture?—I think it was.

38. Do you consider it safe for persons to work at Glasgow who do not join the combination?—They always run a certain risk.

53. Did you take any means to guard against that danger?—We generally employed policemen to protect the works at the different hours at which the workmen came in and went out.

54. How far was that protection effectual?—In most instances

it was effectual at that time, but then we could not protect the men when they went out in the evening from their own dwellings; it was generally then that the attack took place upon them. We cautioned them as much as we could to keep in doors always at night.

55. Do you think any workmen would be safe in Glasgow who gave evidence against the persons engaged in combination?—I scarcely think they would if it was important evidence.

56. Do you think that you are in personal danger in giving your evidence?—No.

57. Why do you think that workmen would be in danger and that you would not?—*Because I think, generally speaking, they have more animosity against those workmen who work against their wishes than they have against their masters.*

58. *What degree of danger or hazard do you think they are subjected to?—To all kinds of annoyances. They are scouted at by the whole trade; they are not allowed to work in any mill where the unionists have sway; they would be left to starvation were it not that they sometimes employ themselves in other businesses as labourers.*

59. *Are they exposed to risk of personal injury?—Yes.*

60. *To what extent?—It has even gone so far as their being shot at, and vitriol being thrown upon them, and their being knocked down and abused in a variety of ways.*

62. In the strike in 1837, do you consider that there was such ground for apprehension as men of ordinary firmness and courage would be moved by?—Yes, I think there was; but not so much as if it had happened in the winter months. It was during the summer of 1837 that the turn-out took place.

63. What is the cause of the difference between the danger in the winter and in the summer months?—They have more opportunities in the dark to threaten and molest people than in the summer.

64. Did the danger vary at different periods of the strike to the workmen who worked against the rules of the combination? —Yes; it was considered towards the latter end of the strike that the intimidation was much greater, and the fear was much greater on the part of the new hands.

65. Can you explain to the Committee how it came to be greater towards the latter end of the strike?—Because it was generally acknowledged that a secret committee had been appointed by the union.

66. Why did the appointment of a secret committee increase the danger?—Its object was considered to be to molest, to abuse, and maltreat the workmen in any way that they could possibly manage, in order to prevent them from working.

By far the most important information given before the Committee is that of Mr. Alison, the sheriff of Lanarkshire. And it is important not only from its contents but from the impartial situation of the witness, and from his having derived (as he states, 1842) all his information from the workmen, and from facts which came before him as a judge, never having had, directly or indirectly, the smallest communication with the masters. The whole of it is material, but we can extract only a very few of the more important passages.

1841. What do you conceive to be the objects, and what is the mode of operation, of the cotton-spinners' association?—I conceive the cotton-spinners' association to be founded upon the same principles, and directed to the same objects, with all the other combined trades in Glasgow, and I presume in the empire; which are, to keep up wages as much as they can, to exclude other competitors as much as they can, and to secure, as much as possible, an equality of employment to all persons in the trade, whether skilled or unskilled; and if those objects cannot be obtained by other means, to employ intimidation and violence without any reserve.

1851. When I say that they employ violence without reserve, what I mean is this—that in the first instance their principle is to obtain their objects by a strike, either directed against a single master or directed against the masters in general, according as the

strike is founded upon a quarrel with an individual master or upon a quarrel with the masters in general; the moment that strike takes place they begin to use intimidation to the new hands. I do not think there has been a single instance of a combined trade in Glasgow having had a strike in which intimidation did not begin the day after.

1852. Have you known, from your own knowledge, that that is the course which the operatives have followed in general?—Invariably; the moment a strike takes place, intimidation either in words, in gesture, or in violence, commences to the new hands. They do not in the first instance proceed to extreme acts of violence: they do not wish to violate the law in the first instance, but they think they are entitled either to intimidate persons who interfere with their labour, or to intimidate all witnesses who appear against them.

2091. Do you yourself believe that a man could be hired in Glasgow to shoot a knob for the sum of 20*l.*?—I know for certain that a man can be hired for a less sum.

2093. I say decidedly that in the last stages of a strike the cotton-spinners seem to attach no more weight to human life than we would in a contest with the French; that they consider they are engaged in a desperate contest with the other party, and that they would speak of the death of the other party as we would of the unfortunate rebels burnt at St. Eustache or at St. Charles in Upper Canada.

2094. During the three years and a half that you have been sheriff, what evidence of facts have you to sustain that opinion—such evidence as you yourself would require in a court of law?—I have heard from great numbers of witnesses that it was a perpetual subject of conversation among the cotton-spinners in the latter stages of a strike, 'How has it happened that nothing is done yet—the secret select has been on so many weeks, and there is nothing done yet?' And I have asked the witnesses, 'What do you mean by nothing done?' and they have said that there was nobody shot last night.

Mr. Alison was examined at great length, respecting the

combination of 1837, mentioned by Mr. Houldsworth and Mr. Todd, which terminated by the murder of J. Smith and the arrest of three persons charged with forming the secret select committee of the combination, and of having, in that capacity, directed the murder. On the trial the prisoners were convicted of violence, but on the charge of murder a verdict of *non proven* was found. It was resolved not to ask Mr. Alison any questions on matters respecting which he had given evidence on the trial. But we have thought that the following portion of his examination ought to be inserted.

1896. Have you any reason to know, without referring to the trial itself, whether any secret select committee was appointed by the cotton-spinners at any time?—The statement I am now to give was not brought forward at the trial at all; it was given by witnesses who were arrested by me in connection with that violence, but they were not brought forward at the trial; they did not appear in the evidence laid before the jury.

1899. What was the statement made to you?—I received information, in the beginning, on the very day on which the trial was first put up, that was the 10th of November, that there were witnesses in Glasgow, who had come forward at the eleventh hour, who could give important information in regard to the trial, and it was in consequence of that that the trial was put off. When I returned to Glasgow, on the 12th of November, I immediately sent for those witnesses. I found that they laboured under the most dreadful apprehensions; they refused to meet me.

1900. Apprehensions of what?—Apprehensions of death.

1901. From whom?—From the associated cotton-spinners. They refused at once to come to the sheriff's office; then I said, that I would meet them at any public-house they chose to appoint, in the suburbs of Glasgow; but they would not come. They said if they were seen going into the same public-house with me, their

lives would be immediately in danger. At last I agreed to meet them in the evening, in a tavern in Glasgow.

1902. Was it your judgment that that was a feigned terror or a real terror operating upon the minds of the people?—I saw at once that it was a real terror, because they had no object to gain by it; they had no claim to any part of the reward; and the consequences to which they subjected themselves were immediate imprisonment for several months. I had no means of protecting them but by sending them to prison; and they got not a shilling of money by it.

1903. What was the substance of the information?—I met them in the evening. They came in by one road into the tavern; I came in by another; and we separated in the same way, each going a different way in the night, so as to elude observation.

1904. Do you mean that you met in a dark room?—No, the room was light; but it was ten o'clock at night. They told me that they had received information from two of the members of the Committee as to the mode in which the secret select committee was appointed. They were examined separately, and anxiously examined by me upon the subject, and the result of their information was this: they said, that a slip of paper was sent to all the thirty-eight cotton-factories of Glasgow, desiring them to send in a delegate forthwith to decide upon important matters connected with the strike. They exhibited some of those slips to me, which I could exhibit to the Committee; but the slip was merely to say, that they were requested to send a delegate to deliberate upon important matters. The thirty-eight delegates accordingly met in the committee-rooms. Those thirty-eight delegates chose a select committee, consisting of twelve. The select committee of twelve were chosen openly, without concealment, by the whole thirty-eight; and it was perfectly understood by all the trade, when this notification was sent, that the object of this was to appoint a secret select committee for the purpose of perpetrating violence; but it was not expressed either in the notification or in the debate upon the subject. After the thirty-eight had appointed twelve, which they did openly in the rooms, the twelve had then a secret meeting, which was in a dark room. The secretary of the association then

took the names; every person brought a name, written down by himself, of one of the twelve whom he recommended to form the secret select committee. The names in the dark room were put into a hat, and delivered to the secretary, who took them out of the room and read the names in the light: the three names then which had the majority of the voices were those which he selected—the three that were at the head of the list; and those three formed the secret select committee.

1905. Do you mean that he read them out?—He read them to himself in the light, apart from the other twelve, and, having read the whole twelve, he selected the three which had the greatest number of votes, and immediately threw the whole of the tickets into the fire. He then returned into the dark room and broke up the meeting without saying anything, and he then sent, in a subsequent part of the day, an intimation to the three upon whom the votes had fallen that they formed the secret select committee, who afterwards met and deliberated upon the subject entrusted to them; so that no person, even of the secret select committee, knew the three, except the secretary.

1906. What object was to be entrusted to those three?—The objects to be entrusted to those three were the perpetration of acts of violence, assassination, fire-raising, and assault. The secret select committee was not appointed, in general, until other methods had failed. The first method used by the cotton-spinners always was to appoint guards round the mills, which was done openly, the instructions to the guards being to oppose the knobs by all means—if they could, by fair means; if not, by foul; and then, if the guards could not effect their object, and if the guards were put down by the authorities, the secret select committee was resorted to as the last resource.

1928. *Did they state to you what the powers of that secret select committee were?—The duties of the secret select committee were to organise means of putting people to death or of setting fire to the mills of refractory masters, or where there were refractory workmen, but particularly punishing knobs by breaking their legs, and other acts of violence.*

2118. I am convinced that, if a sufficiently vigorous and powerful government were established in the manufacturing

districts, to restore the freedom of labour, the immediate effect would be a great increase in the persons brought to trial for those offences; because in the transition from the present state, which is one of unlimited despotism on the part of the skilled trades, to one of freedom on the part of the unskilled trades, there would probably be a great contest. *The present tranquillity arises from the comparatively irresistible power of the skilled trades, which nobody thinks of resisting, any more than they would think here of resisting the Queen's guards.*

2119. In fact, it is a complete system of castes?—It is a complete system of castes, which are operating to exclude all persons from those particular lines, except the favoured connections of the skilled trades; it throws down all the others to the lowest point of depression.

2120. The real sufferers are not the masters so much as the other workmen who are excluded. I am quite sure that for one complaint which I received from the masters, I have received fifty from the workmen suffering under the system.

2121. By 'skilled,' you do not mean skillful?—By 'skilled labour,' I mean the labour of those peculiarly difficult trades to learn, which have got an organisation of trades' unions, such as cotton-spinners, iron-moulders, colliers, iron-miners, and so on; and by 'unskilled labour,' I mean the labour that is easily learned without an apprenticeship, such as the labour of a ploughman, a hand-loom weaver, or a scavenger.

It might be supposed that we had now told the worst, and that no tyranny could be more absolute, more oppressive, or more merciless, than that of a Glasgow combination. But the state of Dublin is now as much worse than that of Glasgow, as the constant presence of a disease is worse than a tendency to its recurrence. The disposition to outrage, to maim, and to assassinate, which in Glasgow appears gradually to grow with the misery and exasperation of a prolonged strike, seems in Dublin to be an

habitual feeling. In both places assassination appears, if we believe the evidence which we have quoted, to be deliberately planned and executed; but while in Glasgow it is the weapon last resorted to in a desperate strife, in Dublin it is inflicted in the mere wantonness of power, as the most effective punishment of the disobedient. As specimens, and, we regret to say, merely as specimens, of the means by which the Dublin combinations assert their authority, we extract the following passages from the evidence of Mr. Fagan and Mr. Mackie:—

Mr. James Fagan, Timber Merchant and Manufacturer of Timber.

3823. Is labour free in Dublin?—With regard to the sawyers it certainly is not, and never was, to my knowledge.

3824. What has prevented it from being free?—Unquestionably combination among the tradesmen themselves.

3825. Has that combination been conducted peaceably, or by intimidation and violence?—It has had several degrees; for a long time it was done by intimidation, and a few years ago there was frightful sacrifice of life.

3826. Were there any murders?—There was a man murdered out of our establishment, at six o'clock on a summer's evening, in a populous street.

3827. What was the man's name?—Thomas Hanlon.

3828. He was in your employment?—He was.

3830. It was a hideous murder?—It was, for there were more than thirty concerned in it.

3831. With what did they kill him?—Principally with bludgeons, what are called in the sawyers' trade 'opening sticks;' it is a sort of stick they have to put into a portion of the cut timber.

3833. What year was that in?—I think it was in 1829 or 1830.

3834. Had he given any kind of provocation at the time he was attacked?—At that period no sawyer was allowed to work

in what was called the hard-wood-yards except on day's wages; no task-work was permitted at that time.

3835. When you say 'was allowed,' who prevented them?—The character they bore at that time was 'body-men,' and there were none to be had but body-men.

3836. That is, combinators?—Yes.

3837. What did they prohibit?—They prohibited any man from working that did not belong to their body, and they prohibited any man from working in those particular concerns except on regular day's wages.

3839. Under what penalty did they threaten?—Up to the period that I am alluding to now they had beaten and abused many; they abused people in our establishment previously to that.

3840. By 'abuse' you mean violence?—Beating them; I think they broke one man's leg, and disabled another man up to the day of his death, which was only about a year ago.

3841. How was he supported afterwards?—I gave him employment as a sawyer in one of my country establishments.

3842. But he had been so severely beaten that he never recovered?—Never.

3843. Had they then beaten several before the period of Hanlon's murder?—They had, so as to kill one or two people; they did not absolutely kill them at the moment, but they died afterwards of the beating; men who brought timber into Dublin sawed.

3854. Have the instances of brutal violence been many and severe?—Extremely so; there never was a fouler deed in the world than the murder of Hanlon. They not only murdered the man first, but they returned a second time, when in the agony of death, and beat him in a most dreadful manner on his limbs and head, and every part of him, and that in one of the most populous streets in Dublin.

3855. In the presence of a number of people?—There were considerable numbers from the time it took.

3863. The unfortunate man was murdered for no other reason than that he preferred working by piecework?—And not be-

longing to the body; he did not pay tribute to the body; but I speak from hearsay. They required that he should pay so much a week, and two guineas entrance.

3864. And for not complying with those terms that horrible assassination took place?—It did; he was frequently threatened previous to it, and he was allowed to go away an hour before the rest of the people.

3865. That he might get home by daylight?—Yes.

3866. And therefore it was that they murdered him in the clear day?—Yes; all the circumstances are on record.

3876. Were you obliged to take any precautions for your own protection?—I carried arms for two years.

3877. What arms did you carry?—I carried pistols.

3878. Did you deem it necessary for your safety to carry those?—I did, and frequently discharged them in the yard in walking about to show that I had them. I was in that situation for two years in Dublin, that no one that saw me, as I walked the street, imagined that I would reach home. I never went out without going out one way and coming home another, or under a strong impression that something would happen.

4186. You have no doubt that your life was in constant peril for two or three years?—I have no doubt of it; and from a communication made to me, that if I had remained in Dublin one Saturday night I would have been sacrificed.

3980. There was a society in Dublin known by the name of Welters?—There was.

3981. A great many outrages, attributed to them, were committed?—There were.

3982. Last year were there not a great many?—A great many.

3983. A number of people beaten?—Yes.

3984. What were the Welters?—The name they gave themselves.

3985. A secret society?—Yes.

3986. Were they supposed to be day-labourers?—Yes.

3987. And many of them were supposed to be idle persons that did not work at all?—The heads of them and some of the parties that had been convicted of riots were known to be so.

3988. The combination of the trades, though not as such belonging to the Welters, yet did they derive advantage from the force and power of the Welters in intimidating?—I do not know it of my own knowledge, but I frequently heard it.

3989. That was the common opinion?—It was.

3990. That if any men violated their rules the Welters would deal with them?—I believe they exchanged a sort of execution of judgment between each other, one party doing to-day, and another party doing in return upon another occasion.

3991. So that a man who was to be beaten of one trade was seldom or never beaten by persons of his own trade whom he might know, but by individuals belonging to some other trade employed for that purpose?—So it is generally understood since Hanlon's murder.

3994. Hanlon, who was murdered, was a man of very good character?—He was a man of excellent character, and it was on account of his character and his large family that he was employed. I myself was willing that the man should have left the employment previous to the murder, *but he said that his family would starve.* My father, who was very much opposed to combination, hired the man, or allowed him to continue: if I had had my own way I would have dismissed him.

3995. From an apprehension of this happening?—Yes; he always carried a hatchet with him, and he had a hatchet with him when he was murdered.

4025. Did it appear upon that trial, that that murder strictly arose from that class of combination, or that it arose from the violent feelings excited by combination?—That preconcerted measures were adopted for his murder appeared evident upon the trial, because they were regularly summoned week after week, a time appointed, and lots drawn, and a regulation entered into, that whoever the lot should fall upon (I am now speaking of what appeared at the trial), that any man that did not wish to join in it should find a substitute, paying him; and I believe on that occasion some one or two apprentices got their freedom for joining in it.

4026. It was a regularly planned murder?—It was.

4027. Were they not out three or four days without meeting Hanlon?—They were; and they employed the opportunity of a sawyer's funeral to perpetrate the murder; and as it was passing through Thomas's Street, it was about the hour this man was in the habit of returning home, one man, that was the leader, brought thirty-two of them into a public-house, and gave them a glass of spirits each.

4028. Was that plan traced up to the managing body of the association?—I am speaking of it now as it appeared from the managing body.

4029. Was it proved to have been done not only with their privity, but by their design and their order?—Decidedly from the principal person in it, who was a man of their own body.

4031. *Among the murderers there were some men of previous good character?—Excellent character.*

Mr. John Curry, Timber Merchant.

6588. Do you reside in the city of Dublin?—I do.

6589. How long have you been in the timber trade?—I think more than thirty years.

6590. Have you had occasion to know anything of the state of combination or the effect of combination in Dublin on that trade?—So far as my own personal knowledge goes, not much, except in connection with the employment of sawyers.

6591. You have not experienced any injury yourself personally?—Our establishment has experienced injury; I have not experienced any personal injury.

6592. What injury has your establishment suffered?—We thought it right in the prosecution of our business to get timber cut in America into one-inch boards, and we brought them here for the reasons I can detail to the Committee, if they desire; but on their arrival the sawyers sent a notice to each purchaser of timber, that if they bought any of those deals in our yard the people would not cut that timber for them; they served a notice on each of the retail timber merchants in Dublin to that effect.

6593. You brought them in to facilitate your business?—Yes;

everybody who is acquainted with the trade knows that the outside boards are the most valuable; those which lie at each side the heart are of the least value; when the timber is felled in America we get the selection of the outside boards at very little extra cost, and the heart timber or unsaleable part is used there for the purposes of the country.

6594. You thus avoid the expense of buying that which would be nearly useless in the freight, the charge being precisely the same?—Yes.

6599. Were those notices effectual?—Yes; we were obliged to enter into a compromise with the sawyers through one of their agents, and to say that we would not sell those inch boards in Dublin, and the consequence was that we sent them over at a large expense to Liverpool, where they were sold.

6601. Of course that was a discouragement to your proceeding in that trade?—We could not repeat the importation of them.

6605. Of course nobody else would import that sort of timber in Dublin?—Not as long as the present system of intimidation continues; remove the intimidation, and the trade may make what regulations they like, for, like all other trades, that will find its own level.

6606. Have you any doubt that intimidation, to a great extent, has existed in Dublin?—Not the least doubt; that is a matter beyond all doubt.

6607. To the extent of loss of life?—Yes.

6608. The combination in Dublin is enforced, according to your evidence, by actual intimidation, actual outrage, and actual loss of life?—Actually by all those three.

6609. Do you conceive it is mitigated or increased latterly, since the discussions have taken place?—I do not know to what period the question would extend; but after the trials which took place, after those men were brought under the influence of the punishment of the law, there was a sort of apparent quiet for a time, but I do not believe the system of combination in Dublin is broken up—I mean as connected with intimidation.

6611. When did the trials take place which created the lull?

—One of them referred to a transaction which I presume was identified with our importation of three-inch plank; a person in Worburgh Street, of the name of William Mason, was so severely beaten that he lay a long time very ill, and his life was despaired of.

6612. How long ago was it?—August 1836.

6614. Where was Mr. Mason beaten?—I have no personal knowledge of that; I believe it was in New Street.

6615. A crowded street in Dublin?—Yes, a populous street.

6617. Do you know the circumstances out of which that arose?—He was looking at the importation of a cargo of our deals, when I said, 'We have got in some new deals, but I fear we cannot sell them to you, for I believe you would get into peril if you were to buy them.' He said, 'I do not regard that; I never had a quarrel with a sawyer in my life; lay them aside and I will purchase them.' There was a man standing by, supposed to be connected with the sawyers; immediately afterwards this outrage on Mason followed.

6620. He was very brutally beaten?—Very brutally beaten; I saw him at one period during his illness, and I thought he would not have lived.

6621. He was a respectable man, and had given no other cause of offence?—I never heard of any; he was a very respectable man; I am not aware of any offence except his offending the sawyers.

6626. You have no doubt that the intimidation by the workmen on employers violating their rules was extreme in Dublin?—It was extreme.

6627. *No man who violated those rules could conceive his life safe for eight and forty hours?—I would not consider my own life safe, violating those rules, for one day.*

6628. *That is the general impression of the city?—It is the general impression in the city of Dublin.*

6629. What form did this intimidation principally assume; in what way was it carried into effect?—I understand, I am only speaking from what public reports sent forth, that there was combination among the various trades, and a sort of lot drawn,

that the first persons whose names were drawn were to commit the violence, that one trade was employed in avenging the breaches of regulations in another.

6630. By this species of appointment they were not so likely to be known?—I presume that was the reason.

6632. You mean to say that there has not been in Dublin anything like free labour for some years?—There is no such thing among a great number of trades in Dublin.

6633. The employers are compelled to submit to regulations made by the operatives?—They are completely at their mercy.

6634. And that of course from the system of intimidation and outrage?—Entirely so.

6637. In what way were you informed by your workmen that you must send away the deals?—A message was sent by one of the sawyers working in our yard through one of our clerks, that we had better not have imported those deals, and a printed notice was served afterwards on each of the retail yard-keepers, that if those planks were purchased by them, they would not cut any timber that was purchased in our establishment.

6640. Was there any intimation of violence in the notice, or only abstinence from buying?—There was no notice of violence.

6641. What made you suppose that they would have recourse to violence if they purchased those deals?—Because I know that in almost every instance, where their rules were broken, they had recourse to violence.

6649. *What was the objection those men had to your taking in those deals?—Because if we imported the deals three inches thick, instead of two, they would have more work in the reduction of them.*

6658. You never disobeyed their regulations?—No; they made me conform to them, for they made me export my planks to Liverpool, instead of selling them on the spot.

6659. Is there any person in Dublin who now imports similar planks?—No.

6660. Does Mr. Martin?—No; they love their own persons too well.

The evidence to which we have referred, and of which we have extracted a very small portion, relates to the period between the passing of the 6 Geo. IV. in 1825, and the sitting of the Committee in 1838. But we see no reason for hoping that, in the interval between 1838 and the present time, any improvement has taken place in the feelings or in the habits of the combined workmen. 'In the hospital at Sligo,' says Mr. Hickson, 'I saw a man who showed me his wrist, laid bare to the bone with a sickle by a party of combinators, because he refused to leave his work at their bidding, to compel his master to give higher wages. It was melancholy to meet with instances of barges sunk in the canals, or set on fire, starch manufactories destroyed, riots occasioned by the exportation of potatoes, vitriol thrown upon the person—all indications of the same disposition to effect an object by violent means that could not be attained by any other.' * There seems some reason to fear that, in the north of England, if there has been a change, it has been for the worse. Not three months ago, in December 1840, two workmen were put to death, in the neighbourhood of Ashton, in a manner as cruel and as deliberate as any of the worst cases that have disgraced Glasgow or Dublin; and the attempt to destroy a whole family by blowing up their dwelling-house failed only by accident.

We now feel it our duty to record our conviction that, if the ruling power of any community allows other au-

* Mr. Hickson's Report to the Hand-loom Weavers' Commissioners, p. 61.

thorities to frame rules affecting, in their daily habits, their employments and their properties, large bodies of men—to affix to the breach of these rules penalties rising, through every gradation of suffering, from simple insult to maiming and death—and to proceed in organised bodies, and in the face of day, to inflict these punishments—that ruling power has abdicated its functions so far as respects those among its subjects whom it has surrendered to its self-constituted rivals. When we are told that in Glasgow the power of the combinations is irresistible, that no one thinks of resisting it any more than they would resist the Queen's guards—when we are told that in Dublin no one who violates their rules can consider his life safe for one day—it is obvious that in these cities, so far as the manufacturing population is concerned, the ruling power is not the state—the prevalent law is not the law of the land—and the punishments most to be feared are not those inflicted by the legal executive.

To admit that there is no remedy for such evils would be to despair of the institutions and prospects of the country; to admit that they may be remediable and, not to endeavour to suggest the means, would be a failure in the duties imposed on us by your Majesty's commission.

But we own that it is a task which we approach with great diffidence. The contest between the law and the combinations has now lasted for several centuries, and scarcely an act has been passed which does not recite the inefficiency of the previous legislation. During this long struggle a feeling has grown up among the workmen that

the law to which they have been opposed has been partial and oppressive. And we must own that much of it has deserved that character, and more of it has appeared to do so.

We have already stated among the vices of the common law, its tendency to confound men's ideas of right and wrong by treating as highly criminal an agreement to do acts, which, when done without concert, are admitted to be blameless. It was absurd to suppose that its prohibitions could be enforced, and that men living together and having a common end could be prevented from combining to effect that end. To a certain degree it checked combinations, but it rendered those which existed in its defiance violent even to ferocity.

Persons engaged in illegal acts are instinctively violent: nothing is more peaceful than commerce; but smugglers, that is to say, those who pursue a commerce which the law prohibits, are proverbially ferocious. Men who know that they are criminals by the mere object which they have in view care little for the additional criminality involved in the means which they adopt. They take those which are most obvious and most effective, and the readiest are intimidation and violence against those who oppose or even who refuse to aid them. Before the 5 Geo. IV. combination, and violence for its promotion, were both criminal, and they had both gone together. That act attempted to separate them. It declared combination innocent, but violence punishable. The workmen do not seem to have understood the distinction. If combination were

innocent, the instrument by which they had always attempted to enforce combination must be innocent too; and the fact that it was illegal was no proof that it was morally wrong, for the legislature itself admitted that it had formerly punished what was morally right, and might therefore be suspected of doing so now.

We fear that the feelings generated by the old law still continue, and that, although the working classes are the persons most interested in destroying the despotism of combinations, the attempt to do so will receive little assistance from any sympathy on their part.

Nor do we hope for general co-operation from the masters. It is a prevalent notion that, as workmen have a common interest in raising wages, so masters have a common interest in lowering them—and that as the workmen combine against a workman who accepts low wages, so the masters combine against a master who gives high ones.

This opinion is not merely erroneous—it is the very reverse of the fact. As the price of every commodity depends on its average cost of production, it is the interest of every master that the cost to every producer but himself should be as high as possible, since on that cost will depend how much he can ask for what he produces himself. His jealousy therefore is directed, not against those who pay more, but against those who pay less than himself. He sympathises with his workmen in their indignation against knobsticks, and is not very anxious to resist a strike that is not directed against himself.

Besides the general rivalry which arms every master against every other, there are whole classes in a state of especial warfare. A workman assisted by new machinery can produce, within the same time, a much larger quantity of finished work than would be obtained from old machinery. One spinner on the new mules, carrying 1,000 spindles, can throw off per hour three times as much yarn as could be spun on the old mules carrying only 336. By dividing this advantage between their spinners and themselves, giving to the spinner a rather less sum per hank or pound of yarn spun, but rather a larger sum per day or per hour, the owners of the improved machinery obtain a superiority which enables them to undersell and perhaps to ruin their rivals. A remedy which we regret to say is often resorted to by the owners of old machinery, is to represent to their own workpeople this change as a lowering of wages, and to turn against it the force of a combination. Again, the establishments which are situated at a distance from markets and shipping ports cannot contend with those which are more favourably placed except by obtaining cheaper labour—an advantage which they can generally procure in country districts to the benefit of their neighbours as well as of themselves. How such an arrangement may be defeated by their rivals, is well shown in the following evidence of MacWilliams, a spinner examined by the Committee of 1838:—

3649. Do you know instances wherein the masters have encouraged strikes?—I do; I before stated that they have generally been the instigators of strikes, but I will instance one case in particular: There was a mill a few miles from Manchester,

at Bollington, where the same description of work was carried on precisely as was carried on amongst many of the fine mills at Manchester; it happened, however, that the master of that mill was paying considerably less prices for his yarns being spun than was paying in Manchester. The masters generally intimated to their men that that mill must either be brought out, the men must either be brought out, or that the master must be brought up to the same price. Our association took the mill in hand.

We do not mean to say that the general body of masters, or even a majority of them, would be guilty of such conduct; nor do we affirm that all those approve of combinations who are ready to turn them against their rivals. We can understand that, finding such a weapon, they may use it, but had much rather that it did not exist. But, admitting that the body of masters have a general and strong dislike of combinations amongst workmen, we yet fear that in separate cases a large proportion of the masters will often be favourable to the combined workmen, and favourable to them, as in the instances to which we have alluded, in their most unreasonable demands, and will therefore give little assistance, if they are not guilty of opposition, to the execution of the measures which we have to propose.

In the year 1838, when the evidence from which we have so largely borrowed was taken, the local police both in England and in Scotland was generally in an inefficient state; and many of the witnesses examined by the Committee, and still more of those examined by the Constabulary Commissioners, believed the most effectual remedy for the violence of combinations to be an improved police.

Such was the opinion of Mr. Hume, the principal author of the 5 Geo. IV., as appears from the following extract from his examination by the Constabulary Commissioners :—

Has your attention been directed to the operation of the Act in question as regards intimidation and acts of violence?—Yes. At present intimidation and combination are allowed to continue, evidently against the letter and intention of the Act, producing many of the evil consequences of the interference with the freedom of capital and labour, which the law was intended strictly to secure. I stated to the County Rate Commissioners, in my evidence, the present defective system of police, and that it would be productive both of protection to industry and economy to the county if a separate and distinct police were established in each county, having their time entirely devoted to that duty, and liberally paid for their services, to secure the performance of their duties, and place them above temptation. I stated also, that it appeared absolutely necessary that they should be free from local connections, which render the present constables so very inefficient. I consider that it would be of as much use to the workmen themselves as it would be to the masters to be advised in time as to the consequences of the course they were taking when they happen to be misled to an illegal course. I am decidedly of opinion that the government have not given the repeal of the Combination Law a fair trial. The object was perfect freedom to masters and men in their agreements as to the hours of labour and wages, and yet they have never given that protection necessary to secure either. The constables are inefficient, the magistrates are inefficient, and the working classes, through ignorance, are often involved in breaches of the law which, under the alterations I have suggested, would be avoided.*

It is obvious that, unless supported by an efficient police, neither the 6 Geo. IV., referred to by Mr. Hume,

* Report of Constabulary Commissioners, p. 165.

nor indeed any other law whatsoever, could have a fair trial; but we think there is sufficient evidence that the failure of the Act was not occasioned solely by the inability of the police to enforce it. If we were required to point out the spot in the British islands, or in the whole of Europe, in which combination is most absolute, and the 6 Geo. IV. the least operative, it is Dublin. But Dublin possesses, and has long possessed, a large and well-organised police. We trust that the 2 & 3 Vict. cap. 93, authorising the local authorities to create a constabulary force, will be generally acted on; and we hope also that it will lead to a more uniform and a better centralised system of police. But we believe that there are defects in the 6 Geo. IV. which would render it inefficient even if supported by a good police in England and Scotland, as it has been inefficient, although so supported, in Dublin.

But though we have a general conviction that the law respecting combinations is defective, and though we think that we perceive some of its deficiencies, we are far from thinking that we can state all its defects, and still farther from supposing that we can point out the best remedies.

We believe that for these purposes a further and special enquiry is necessary—an enquiry which must be prosecuted on the spot, and by persons acquainted with the local criminal law. We believe that one of the errors of our previous legislation has been the attempt to legislate by one Act for countries so different in their common law, and in their forms of procedure, as England and Scotland, and so different in their habits as England and Ireland. We

recommend that three persons, with the requisite qualifications, be directed to enquire simultaneously, but separately, in the principal manufacturing districts of the United Empire, into the operation of the laws respecting combinations, and to prepare (with the assistance, in the details, of an English, Irish, and Scotch solicitor) bills for its amendment. And that the law officers of the Crown for England, Ireland, and Scotland, be directed to consider the bills, and to bring them in, with such alterations as they may think expedient. We believe that the enquiry, if confided to able persons, who could devote their whole time to it, need not take more than three or four weeks, and preparing the bills three or four weeks more—in which case they might be passed during the present session.

But although we admit our incompetence to report fully on the amendments necessary in the present law, we will venture to suggest those which, with our limited knowledge of the facts, we believe to be advisable.

In the first place, we think that some further relaxation of the common law respecting combinations is required both by expediency and by justice. We have already stated that there is scarcely an act performed by workmen, as members of a trades' union, which is not still at common law an act of conspiracy and a misdemeanor. To what oppression this state of the law may be turned, we will show by an example, taken from the evidence given before the Committee of 1824, on Artisans and Machinery, p. 394.

In 1818 the propriety of an increase in the wages of the

weavers in the north of England was discussed, both by the masters and by the men. It was agreed by many of the masters that an advance of 7*s.* in the pound on the existing wages should be made by two instalments, and they recommended the weavers to meet, and, if they were satisfied with this arrangement, to accede to it, and if any masters refused to do so, to leave them after completing their existing engagements, and work for those who agreed to make the advance.

To avoid the danger of disturbance, and the loss of time which a general meeting must have occasioned, the weavers called a 'deputy meeting,' that is, a meeting of persons deputed as their representatives by the weavers of the different districts.

At this meeting the following resolutions were agreed to:—

1. That every individual present at this meeting agrees to take the advance of 7*s.* in the pound.

2. That as it is in the power of the manufacturer to compel the weaver to weave out his work in the loom, or on hand, he is advised in such case to obey the dictates of the law; yet no injunction is hereby laid on him by this meeting, and he is left entirely to his own discretion; but he is not to bring [take] any more work from any manufacturer [at a price] under the proposed advance.

For having been present at the meeting, and signed the resolutions, three working weavers, Ellison, Kay, and Pilkington, were arrested, and bail for 400*l.* demanded. It was obtained, however, and they were subsequently tried on an indictment at common law for a conspiracy,

convicted, and sentenced, Ellison to one year, and Kay and Pilkington each to two years' imprisonment in Lancaster Castle, an imprisonment which they all three underwent.

In less than four years after they had undergone their punishment, the 5 Geo. IV. declared the act for which they had suffered to be perfectly innocent. And so it remained for about eleven months. But the 6 Geo. IV. has, as we have seen, revived the common law, except as respects meetings and agreements affecting only persons present at the meeting or parties to the agreement. The second resolution signed by Ellison, Kay, and Pilkington, applied to absent parties. It was not, therefore, within the exception of the 6 Geo. IV., and the signing such a resolution, or even being an assenting party, is a misdemeanor punishable by fine and imprisonment, at the discretion of the court.

It may be said that no one would now think of enforcing the common law in such a case. We believe that such has been the improvement in the sense of justice and in good feeling among the higher classes since the year 1818, that such proceedings, or such a sentence as those which we have just related, could not now take place. But legally they might take place, and those portions of a law which are too oppressive to be executed necessarily throw discredit on every part of it.

On the other hand, we recommend that the statutory process and penalties be extended to some acts now subject only to the severe punishment, but inconvenient process, of common law. Such are agreements by workmen to

strike for the purpose of forcing a master to discharge a given person, or to disuse a given sort of machinery, or generally to change his mode of managing his business. Such, again, are acts on the part of masters for the purpose of occasioning or promoting strikes on the part of the workpeople of other masters. We believe this conduct on the part of the masters to be so common, and so mischievous, that we recommend the penalty to be distinct and severe; and that, so far as it is pecuniary, it be recoverable by any party aggrieved, or by a common informer. We further recommend, that some acts be declared punishable, the criminal character of which has not yet been distinctly recognised.

As examples of the acts to which we refer, and also as confirmatory of our views, we insert the following passages, from the evidence of Mr. Alison, taken by the Committee of 1838:—

2260. You have recommended that the legislature should define where the law should take effect in preventing intimidation; can you specify the exact rule which should be laid down in practice?—I think it should be declared a punishable offence to intimidate by words or by gestures, or by assembling in such crowds as to inspire apprehensions in the mind of a person of ordinary firmness, at the time when a strike is going on, or with a view to interfere with the free disposal of labour.

2261. I think it should be clearly and explicitly declared, that the putting guards round a mill, on the part of the association, though they did nothing, should be punishable; that the guards should be liable to immediate seizure. The practice of putting guards is universal: the moment a strike takes place, the mill is surrounded with men, who keep their eye upon everything that goes

out and in. Now I think that should be declared punishable immediately, although the guards do nothing; it is evidently done for an illegal purpose; that is to say, I would recommend that the legislature should declare that it was illegal, provided it was done with the illegal attempt at intimidating.

We further recommend that, for the purpose of facilitating the apprehension and conviction of persons guilty of outrage or intimidation, any master, workman, or other person aggrieved, or any persons assisting him, including, of course, the police, be authorised to seize any persons so offending, without summons or warrant, to carry them before a justice, and there compel them to give their names and addresses. We recommend further, that the refusing to give a name or address, or the giving a false one, be a distinct and cumulative offence.*

We further recommend that the justices have power to convict and punish without naming the convict, identifying him by description or otherwise.

The following evidence of Mr. Foster, the experienced magistrate in Manchester, delivered to the Committee of 1838, will explain the motives of our last recommendations:—

3314. Are you of opinion that the laws respecting combinations ought to be altered in any respect, without interfering with the principle of combination?—I think that if they were altered it should be with a view to prevent violence and intimidation, and to render more easy the detection of offenders.

* See a precedent for the power of the party aggrieved to apprehend in the Malicious Trespass Act, 7 & 8 Geo. IV. cap. 30, ss. 24–28.

3315. *Can you point out any way by which that might be done; has it occurred to you in your experience as a magistrate?—The practical difficulty one has met with has been this, that when a mill has been watched, it has been done on many occasions by parties who were not at all known, and whose names could not be obtained. In many cases such parties could not by law be apprehended upon the spot; and as no process can be issued against them, from want of knowing their names and residences, it becomes important that there should be a power of apprehending them.*

3321. As I understand you, the difficulty in working out the present law is in getting evidence of intimidation; it can assume so many shapes before it becomes absolutely tangible that there is a difficulty?—Yes.

3322. Now, have you on your mind any set of facts which ought to create a legal presumption of guilt, throwing on the party the necessity of a defence?—Yes; I think there are many cases in which it would be perfectly fair to do so, and where at present you cannot bring the matter home from want of knowing how to direct your process, and from not having the power to apprehend the party.

3323. The case you put seems to be this: a manufactory under a general strike; parading or passing as sentinels a certain number of workmen before that manufactory; combining those two facts before the judge, whoever he was; or the jury, making it requisite for the person thus acting as sentinel to explain why he was there?—I think that in such cases the principle might be applied with great advantage.

3324. Are you aware it is the French law of combination?—I am not.

3325. Then, when a manufactory is under a strike, upon any proof of a crowd, which naturally would intimidate, the French law requires an individual proved to be in the crowd to explain why he was there?—It seems to me that would be a perfectly reasonable enactment under certain restrictions, guarding it in any way that may be thought fit, by a previous application and depositions before a magistrate, or otherwise. When there is proof

that for perhaps a month or more a mill has been so watched that the owner has been unable to procure hands to work in it, and the parties cannot be effectually proceeded against, that seems to me to be a case which requires a remedy.

We also recommend that any serious injury inflicted on the persons or property of masters or workmen, in consequence of their resistance to a combination, or of witnesses, be repaid by the hundred or other similar district. Those who have had sufficient moral and physical courage to make such a resistance, or to give testimony against a combination, and have suffered for so doing, are martyrs in the cause of liberty; the community which has profited by their firmness is bound as far as it is possible to make good their losses.

The last amendment in the 6 *Geo. IV., which we have to recommend is, the return to the Act of the* 5 *Geo. IV. by repealing the twelfth section of the* 6 *Geo. IV., that by which an appeal to quarter sessions is given on every conviction, and judgment is suspended on the parties' own recognisance, and that of two sureties in* 10*l. We believe that this clause has contributed more than any of the other defects in the Act to its utter failure.*

The 10*l.* security can of course always be obtained from the funds of the combination, so that no one convicted under the Act need fear punishment before the period of appeal has arrived. And we know how much, even among educated persons, and still more among the uneducated, every evil and every punishment, even if certain, loses its terrors as it becomes more distant. But

in the cases which we are considering, delay is almost always impunity. Few strikes last many weeks: an accommodation, or a treaty for an accommodation, generally takes place before the quarter sessions are held, and of course it is arranged or understood that the prosecutions appealed from shall be discontinued.

We have to add to this imperfect outline, only an earnest wish that no preamble be prefixed in the spirit of that of the 6 Geo. IV. denouncing combinations as 'injurious to trade and commerce, and especially prejudicial to the interests of all concerned in them.' We firmly believe in the truth of this preamble. We believe that the general evils and general dangers of combinations cannot easily be exaggerated. We believe that if the manufacturer is to employ his capital, and the mechanist and chemist his ingenuity, only under the dictation of his short-sighted and rapacious workmen, or of his equally ignorant and avaricious rivals; if a few agitators can command and enforce a strike which first paralyses the industry of the peculiar class of workpeople over whom they tyrannise, and then extends itself in an increasing circle over the many thousands and tens of thousands to whose labour the assistance of that pecular class of workpeople is essential—we believe, we say, that if this state of things is to continue, we shall not retain the industry, the skill, or the capital on which our manufacturing superiority, and, with that superiority, our power and almost our existence as a nation, depends. But though we believe in the truth of these premises, they are not the grounds on which we wish now

to proceed. Our immediate object is to give freedom to the labourer: and we firmly believe that, as soon as he is made master of his own conduct, he will use his liberty in the way most useful, not only to himself, but to the rest of the community.

CHAPTER VIII.

LEWIS ON DEPENDENCIES.*

GOVERNMENTS are subject to many cross divisions. With reference to the number of persons by whom power is exercised, they may be divided into Monarchical, Aristocratic, Democratic, and Mixed; with reference to the amount of power, into Supreme and Subordinate; with reference to the seat of government, into Domestic and Foreign. In our review of Lord Brougham's 'Political Philosophy,' we considered the first of these divisions. In the following pages we shall consider the second; taking as our text-book the original and profound work of Mr. Lewis, named at the head of this article.

Mr. Lewis begins by an enquiry into the nature of the powers of a sovereign government, and the modes in which they may be exercised and delegated. To these powers he assigns no limit but physical impossibility, and the will of the people—a doctrine once questioned but now generally admitted.

The modes, he adds, by which a sovereign government may exercise its powers, can be conveniently reduced to the four following heads:—First, it may exercise its powers in the way of legislation. Secondly, it may exercise its powers by special

* From the Edinburgh Review for April 1846.

commands or acts intended to carry into effect a pre-existing law. Thirdly, it may exercise its powers by special commands or acts not intended to carry into effect a pre-existing law. Fourthly, it may exercise its powers by enquiring into some fact or facts, for the purpose of guiding its conduct in some measure or proceeding, falling under one of the three heads just enumerated. These four powers may be respectively styled the legislative, executive, arbitrary, and inquisitorial powers of a sovereign government.*

It appears to us, that a more convenient arrangement will be to divide the powers of government, and the acts by which they are exercised, into two great classes—legislative and executive; and to consider what Mr. Lewis terms arbitrary and inquisitorial powers, a mere subdivision of executive power.

According to this nomenclature, the legislative power is exercised by issuing general commands binding the whole community, or, in other words, Laws. The executive power, by issuing special commands addressed to one or more individuals. Executive acts must then be subjected to two cross divisions. In the first place, they may be legal or arbitrary. A legal executive act is a special command authorised by the existing law. An arbitrary executive act is a special command not authorised by the existing law. The issue of such a command by a subject is an offence. Its issue by the supreme power was the Greek ψηφισμα and the Roman *privilegium*; but it has not, as far as we are aware, any modern name.

Again, an executive act may be either judicial or ad-

* P. 6.

ministrative. A judicial act is the mere decision of a controversy. It requires in general to be preceded by some complaint, and to be carried into effect by some further administrative act. All other executive acts, including among them those which Mr. Lewis terms inquisitorial, may, we think, be most conveniently comprehended under the general head of administrative.

The reader must steadily keep in mind that this is a cross division, and that a judicial or an administrative act may be legal or arbitrary. A divorce statute is an arbitrary judicial act. On the complaint of one of the parties, the supreme power, in opposition to the general law, commands the separation of a married pair. A railway statute is an arbitrary administrative act. The supreme power, in opposition to the general law, commands the individuals on a certain line of road to give up their properties to other persons. The late statute respecting 'excessive gaming,' was an arbitrary executive act, so far as respects the persons whom, in opposition to the general law, it exempted from penalties inflicted by that law; and so far as respects the persons who had already commenced actions for the recovery of those penalties, and whom it forbad to continue them. So far as respects all other members of the community, whom it deprives of the power of commencing such actions, it is a legislative act. So a statute disabling an individual to contract debts, would be an arbitrary executive act as respects that individual. It would be a law as respects the rest of the community, whom it would deprive of their legal remedies

against him. Nor is an act necessarily executive because it appears immediately to affect only a given class of persons; if that be a class to which other members of the community may probably or even possibly belong. The provisions of the Mutiny Act apply immediately only to soldiers; but they affect the whole male portion of the community, since every male may have to bear arms. So the statutes respecting clerical residence affect immediately only the actual clergy: but prospectively, all who may take orders. They are, therefore, not administrative acts, but laws.

Mr. Lewis has shown, with great clearness, that a supreme government must possess both legislative and executive powers, and perform both legislative and executive acts. To lay down general rules and take no steps for enforcing them, would be nugatory. And, on the other hand, to govern solely by arbitrary commands addressed to individuals would be intolerable, not merely to the subjects but to the ruler. Every government issues laws, though it is often tempted by convenience or passion to break them. The comparative rarity of arbitrary acts in mixed governments, arises from the difficulty of persuading the dissimilar bodies which together constitute the supreme government, to unite in violating an established rule. But for this purpose the governing bodies must be dissimilar, and in this consists the great superiority of complicated over simple constitutions. The former, without doubt, have their disadvantages. We have often suffered in Great Britain from the ignorant or bigoted interference of the Crown; often from the rejection, and

still more often from the spoiling, in the House of Lords, of bills sent up by the Commons: and still more often from the hostility of the constituencies to measures which Parliament, if it had dared, would have passed with scarcely a dissentient. Difficulties of this kind affect us at this instant. They retard our education, impair our prosperity, and endanger our safety. Some of them would be immediately removed if our government were a pure monarchy; others if it were a pure aristocracy; and others, again, if it were essentially democratic. It is easy to cure an old evil if you are willing to create a new one. But the advantage would be dearly purchased. It is to the balanced powers of our complicated constitution, that we owe the general adherence of the supreme government to established rules. Under a pure form of government, or even a form in which the monarchical, the aristocratic, or the democratic element is irresistible, no man's person, or property, or station, is safe from the caprices of the sovereign; whether that sovereign be a king, a senate, or a convention.

All governments, however, even the most complicated, are guilty of *privilegia* in civil matters. Half our legislation consists of private Acts of Parliament. There are only a few governments which appear to have discontinued the practice in criminal cases. The last attempt of the kind in England was the bill of pains against Queen Caroline.

As a sovereign government is omnipotent, it necessarily can delegate any portion of its powers. But we must carefully distinguish delegation from transfer. Delegation,

by a sovereign government, is always to a subordinate, and always implies, expressly or tacitly, that the delegated power may be resumed. If a sovereign government transfers, without power of resumption, any part of its legislative powers, the transferee becomes either independent, or a member of the supreme government. When the Act of 1782 transferred to the Irish Houses of Parliament the power of legislating for Ireland previously exercised by the British Houses, the Irish Houses instantly became members of the supreme government of Ireland, and Ireland became an independent state, accidentally connected with Great Britain by possessing a common king. Such would have been the case in Lower and Upper Canada, if the acts which gave constitutions to those provinces had exempted them from the jurisdiction of the British parliament.

But while it retains the supreme legislative power, a sovereign government may delegate its other powers to any extent.

The Queen, Lords, and Commons, who together form the sovereign government of the British Empire, delegate to subordinate functionaries nearly the whole of their executive, and by far the largest portion of their legislative, functions. They retain, indeed, as respects the British islands, the power of issuing arbitrary commands to individuals; and they have transferred to one of their own body, the House of Lords, a portion of judicial authority; and the burden which the retention of these two small portions of executive power throws upon them is remark-

able. Appeals in the Lords, and *privilegia*, or, as they are usually termed, private business, in the Commons, occupy more of the time of each House than all their great duties of supreme legislation.

It is not absolutely necessary that a subordinate functionary should possess both legislative and executive authority. If the Poor Law Commissioners of England had been entrusted with no power beyond their legislative power, that is, the power of issuing general rules for the administration of the poor laws, leaving those rules to be enforced by the ordinary tribunals, their power and their usefulness, though far inferior to what they are now, would still have been very great. Again, many administrative and judicial acts are so simple, that their performance may be subjected to rules complete and precise. Such are the registration of electors, the nomination of representatives, and the carrying into effect the orders of courts of justice. Neither the revising barrister, under a good system of registration, nor the elector, nor the constable, need have, or ought to have, any legislative power.

But almost all the higher authorities, both judicial and administrative, have to deal with cases, and to meet difficulties, unprovided for by any general law. The greater part of the distributive law of every country is the creation not of its legislature, but of its courts of justice. Neither the powers of the human mind nor the powers of language are sufficient to foresee or to describe the complication and contingencies of events. Every court endeavours to preserve the uniformity of its decisions, partly because it

is useful, and partly, perhaps, to escape trouble and responsibility. It decides every new case, therefore, according to the analogies of its previous decisions. Every such decision becomes a precedent—that is to say, a law in cases precisely corresponding, and an element in the decision of analogous cases.

And even where the separation of legislative or executive functions is practicable, it is seldom desirable. Those who have made a law, are likely to understand best its meaning, and to be most desirous of enforcing it. How many acts of parliament, introduced with great pomp, and passed after long debate, have been ineffectual either because the judicial authorities have thought fit to evade them, or because some slight technical defect has rendered it impossible to apply them?

The statute *de donis* was intended to perpetuate entails. The courts of law invented a fictitious proceeding which rendered it nugatory.

The statute of uses was intended to put an end to the strange English division of ownership into legal and equitable; the system under which the same estate belongs to one person in the opinion of every common-law judge, and to another person in the opinion of every equity judge. The courts decided that it might be rendered inoperative by adding three words to a will or a conveyance.

The statute against combinations was passed in order to prevent an ignorant, selfish, and unscrupulous minority from interfering with the employment of capital, industry, and skill, and enforcing its decrees by the destruction of

property, by mayem, and by murder. The clauses which prevent prosecution, unless the offender be summoned by name, and which give an appeal on conviction, have rendered all the other enactments inoperative, and have left our manufacturing classes subject to a tyranny, compared to which the government of Turkey is enlightened, and that of Russia merciful.

A traveller in Ireland is struck by the slovenliness with which the peasants cultivate the land, for the occupation of which they will incur every danger, and perpetrate every crime. He is told that, having no leases, they fear that improved cultivation would expose them to increase of rent. He asks why there are no leases, and is told that a landlord who granted a lease would soon see the land sublet, and what was enough to keep one family in constant employment and comfort, subdivided amongst half a dozen necessarily idle and necessarily miserable. But why, he asks, should a landlord permit this? What is to prevent his using the remedies afforded by the statute against subletting? Oh! the answer is—there are such technical difficulties in applying that statute, that it is little relied on. Such failures cannot occur when the same party both frames and executes the law, and modifies its provisions to meet every attempt at evasion. No fraudulent trustee can defy the Court of Chancery.

We believe that, among the causes which have contributed to the excellence of the British parliament, as an instrument of government, are its combination of legislative and executive functions—its being constituted of persons

almost all of whom are executive officers, and its comprehending among its members all the heads of the administrative and judicial departments. A legislative assembly performing no executive duties, and excluding from its body all executory officers, soon degenerates into an opposition, and by rendering government, according to the existing scheme, impracticable, brings on a revolution, in which it generally becomes first the usurper, and afterwards the victim.

It will be seen hereafter that one of the great difficulties in the management of dependencies, is the providing duties for the provincial assemblies.

Having explained in the preliminary essay, of which we have given an outline, the nature of the supreme and subordinate powers of government, and the mode in which the latter are delegated, Mr. Lewis proceeds to a detailed examination of the political incidents to a dependency; that is to say, to a community, part of a sovereign state, but immediately subject to a subordinate government. The portion of the sovereign state, which is the seat of the supreme government, he terms the *dominant country*; the community subject to the subordinate government he terms the *dependency*.

A subordinate government (says Mr. Lewis) is a government which acts by delegated powers, but which possesses powers applicable to every purpose of government; which is complete in all its parts, and would be capable of governing the district subject to it, if the interference of the supreme government with its proceedings were altogether withdrawn.

A subordinate government resembles a sovereign government

in this—that it is completely organised, and possesses all the institutions requisite for the performance of the several functions which are proper to a government. It differs from a sovereign government in this—that it is subordinate to, or, in other words, in the habit of obeying, the government of another political society.

A subordinate government resembles a body of functionaries exercising certain powers of government over a district which is immediately subject to a sovereign government (such as a county, department, municipality, or borough) in being subordinate to a sovereign government. It differs from such a body of functionaries, in possessing the *full* complement of the powers and institutions necessary for governing a political community. For example, the town-council of an English borough, with the other borough officers, though they exercise many of the functions of government in the borough, do not exercise them all; and it would be necessary for the borough, if the interference of the supreme government were withdrawn from it, to create new public departments before it would possess a completely organised government, capable of presiding over an independent political society.

Several dependencies may be subject to the same supreme government, or, in other words, may be dependent on the same dominant community. The entire territory subject to a supreme government possessing several dependencies (that is to say, a territory formed of a dominant country together with its dependencies) is sometimes styled an *empire*; as when we speak of the British Empire. Agreeably with this acceptation of the word empire, the supreme government of a nation, considered with reference to its dependencies, is called the *imperial government*, and the English parliament is called the *imperial parliament*, as distinguished from the provincial parliament of a dependency.*

To this definition of a dependency must be added the element of geographical separation. No district surrounded by the territory directly subject to a supreme

* P. 71.

government is governed as a dependency. Such a mode of government is, as we shall see, less convenient to both parties than direct government. It is adopted only in consequence of the necessity of rapid communication between the subjects and their immediate rulers; and is obviously inapplicable to a district forming part of a territory possessing such a communication. Mr. Lewis remarks that, as political and physical science and power increase, facilities of intercourse increase in a still greater ratio, and, consequently, that many countries are now governed directly which formerly must have been treated as dependencies. And it may be added that many now continue to be treated as dependencies, after the necessity for so treating them has ceased. There was a time when Jersey and Guernsey were practically as distant as Nova Scotia is now. They might now be governed directly by the Imperial government as easily as the Isle of Wight. But we seem to prefer the permanent inconveniences of the existing system to the temporary ones of a change.

To Mr. Lewis's definition of a dependency, we think that we ought to add his definition of a colony, as the two words are often used indiscriminately, though they properly express different ideas.

A colony (says Mr. Lewis) properly denotes a body of persons belonging to one country and political community, who, having abandoned that country and community, form a new and separate society, independent or dependent, in some district which is wholly or nearly uninhabited, or from which they expel the ancient inhabitants.

It is essential to the idea of a colony that the colonists should

have only formed a part of the community which they have abandoned, for their newly adopted country. If an entire political community changes its country for a time, and moves elsewhere, it does not form a colony; thus a roving tribe of Scythians or Tartars does not found a colony when it settles in the temporary occupation of a new district. So the Athenians, during the Persian invasion of Attica, when they embarked in their ships and took refuge in Salamis, were not a colony. Nor would they have been a colony, even if they had permanently changed their place of abode; for when one entire nation changes its seat and establishes itself permanently in another country (as the Franks in France, the Lombards in Italy, or the Vandals in Africa) it is not said to found a colony.

It is, moreover, essential that the persons who have abandoned their native country should form a *separate political community.* Unless persons who abandon their native country form a separate political community, they are not colonists. For example, the French Protestants, who fled from France after the revocation of the Edict of Nantes, and took refuge in Germany and England, did not constitute colonies in those countries.

Since a colony, though always a separate, may be either an independent or a dependent community, it is evident that a colony is not necessarily a dependency. It is manifest, on the other hand, that a dependency is not necessarily a colony of the dominant country, or, indeed, of any country.*

Having distinguished a dependency from a colony, and shown it to be a community immediately subject to a subordinate government, which is itself a subject or a portion of a supreme government, we proceed to consider, with Mr. Lewis, the extent of the powers delegated to a subordinate government, and the persons by whom they may be exercised.

The simple plan is to appoint a single viceroy, resident

* P. 170.

in the dependency, and to delegate in him absolute power —legislative and executive.

The Satraps of ancient Persia, like the Nabobs of modern India, possessed, for the time, all the authority of their masters. They levied armies, imposed taxes, distributed justice, contracted alliances, and made war and peace. But it has always been found difficult to retain in subjection such independent functionaries. One remedy, which has been generally, though not universally, adopted by the supreme governments of Europe, both ancient and modern, has been to distribute the powers of the subordinate government among several persons. Thus the dependencies of Athens were generally governed by subordinate democracies; those of Sparta and afterwards of Rome, during the republic, by subordinate aristocracies; those of Venice, by subordinate oligarchies; and the subordinate governments of the British dependencies are generally mixed—each supreme government reproducing itself in miniature.

A further refinement has been not merely to distribute the subordinate power among several persons, but to retain some of those persons in the dominant country. Thus the subordinate government of the greater part of the British dependencies resides partly in persons resident in each dependency, and thence called the Local government; and partly in the Secretary for the Colonies, resident in Great Britain, and thence called the Home government. The subordinate government of British India consists partly of the Governor and Council, resident in

India, and there forming the Local government; and partly in the Board of Control, and partly in the Court of Directors, both resident in England, and forming the Home government. Of course, when we consider the Colonial Office and the Board of Control as forming parts of the subordinate governments of the British colonies and of India, we speak popularly, and not technically—the Colonial Office and the Board of Control being merely the representatives of the real Home government, the Crown. Over the whole presides the Imperial parliament, constituting the supreme government, to which all these subordinate governments, including the Crown, so far as it forms a part of them, are subordinate.

A local subordinate government must, of course, be empowered to do all those executive acts which neither the home subordinate government nor the supreme government is capable of performing. In all cases it must collect taxes, and must administer justice and police. And its powers must be more and more extensive in proportion as the difficulty of communicating with the supreme government increases. Thus the Local government of India may make war and peace and treaties—powers which are denied to the local governments of our American dependencies. The power to perform arbitrary executive acts is seldom expressly granted to it; though Mr. Lewis has cited an example of such a delegation from the King of Spain to the Viceroy of Naples.* And even when such a power, in its fullest extent, has been included

* P. 137.

in general words, the supreme government has sometimes, on appeal, denied that such words bore their obvious meaning. It is difficult, for instance; to affirm that the Acts of the 31st Geo. III. cap. 31, and the 1st Vict. cap. 9, which gave to Lord Durham what were supposed to be dictatorial powers, did not empower him to perform arbitrary executive acts. The latter Act enabled him to make such laws or ordinances for the peace, welfare, and good government of the province of Lower Canada, as the legislature of that province could have made with the consent of the Crown. And the former Act empowered the legislature of Lower Canada, with the consent of the Crown, to make laws for the peace, welfare, and good government of the province, to be valid and binding to all intents and purposes whatsoever.

Under this authority, Lord Durham made an ordinance, enacting that it should be lawful to transport certain persons from the province; and then, in pursuance of that law, issued a proclamation ordering their transportation. Both the Imperial Executive, however, and the Imperial Legislature, denied the validity of the ordinance. The former released the persons affected by it, and the latter declared that it could not be justified by law *—appending, however, to the declaration an enactment, itself an arbitrary executive act, exempting from prosecution all persons concerned in the issue of the ordinance, or in its execution.

We have seen that some legislative power is necessarily

* 1 & 2 Vict. c. 112.

incident to the higher executive powers. Every court of law must establish rules of practice, every deliberative assembly forms of proceeding. But besides those which grow almost spontaneously from usage, almost every subordinate government has received or has assumed the power of enacting formal and permanent laws, civil, penal, and organic. Of course, the exercise of this power is under the control of the supreme government. Such a government is, as we have seen, omnipotent. Its absolute authority comprehends the whole empire over which it presides; and necessarily enables it to legislate directly for any portion of that empire, and to abolish, suspend, or alter the laws enacted by any subordinate power.

It has further been said, that the laws of a dependency must not be inconsistent with the fundamental principles of those of the dominant power. Mr. Lewis, with great reason, doubts the truth of this maxim. It was solemnly argued before the Court of King's Bench in General Picton's case. As governor of Trinidad, he had allowed evidence to be expressed by torture. The jury found that this was required by the Spanish law, in force when the island came into our hands, and never expressly abolished. If the subordinate government of Trinidad had the power to continue this law, General Picton was justified. If, on the other hand, the obtaining evidence by torture is so repugnant to the principles of English law, as to become illegal in every country as soon as it becomes subject to British rule, his act was as illegal as if it had been committed in London. No decision was made, but all Lord

Ellenborough's remarks during the argument were in favour of the accused. We tolerate polygamy in Asia, we long tolerated the burning of widows in Hindostan, we introduced slavery into many portions of America and the West Indies, and probably support it now in some parts of India. If such institutions as these are consistent with the fundamental principles of the British government, what can be repugnant to them?

According to English law, this power of subordinate legislation, though it may be communicated, delegated, or absolutely transferred by grant, or even by mere acquiescence, originally resides exclusively in the Crown. A distinction was once supposed to exist between dependencies acquired by the Crown by conquest, and those originally settled by English subjects. As to the former, the absolute legislative power of the Crown was always admitted. As to the latter, it was said that, as Englishmen carry their rights with them, they carry with them, among those rights, that of taking part in framing the law under which they are to live. This limitation, however, of the power of the Crown has been long abandoned, partly from the difficulty of saying what amount of legislative power is the birthright of Englishmen, and partly from its inconsistence with the supreme legislative power of Parliament. The dependencies with respect to which the Crown retains this power being generally colonial, are usually called the Crown colonies.

We know of no case in which this power has been completely transferred by the British Crown. One of the

fullest delegations is made by the 3rd and 4th William IV. cap. 85—the Act which now regulates the subordinate government of British India. That Act enables the Governor-General in Council to make laws for repealing or altering any laws whatsoever, now in force, or hereafter to be in force, within the Anglo-Indian territories; and to make new laws for all persons, British, or natives, or foreigners, and for all places and things whatsoever throughout the whole and every part of the said territories. But such laws are not to affect any of the provisions of the Act, or of the Mutiny Act, or the prerogative of the Crown, or the constitution or rights of the India Company. If the Home government disallow any such laws, the governor, on receipt of the disallowance, is to repeal them. Unless and until so repealed they have the force of an Act of Parliament.

Such a power of legislation, however comprehensive in language, when given to an officer appointed by the Home government, removable at will, and bound to obey its instructions, is no material diminution of its power. It only forces it to legislate through the medium of its officer, instead of directly. He is the mere instrument of his superiors, who can always direct his measures, or stop them, or send a successor to undo them.

The local governments of Maryland, Connecticut, and Rhode Island, before the American revolution, enjoyed legislative power approaching nearer to independence, for the Crown had no veto. They were restrained, however, by the provisions of their charters, which required that

their laws should be 'as far as conveniently might be agreeable to the laws, statutes, customs, and rights of the realm of England;'* or, 'not contrary to the laws of England;'† or 'as near as may be agreeable to the laws of England, considering the nature and constitution of the place and people.'‡ And this restraint was rendered effectual, by an appeal from their Courts of Justice to the Home government—that is to say, to the King in Council—an appeal which the subordinate legislatures could not abolish, and which was avowedly intended to prevent an improper exercise of their power.

It is remarkable that the legislators of Connecticut professed, instead of the English, to take the Mosaic law for their guide. They declared it to be their mission to declare and establish the laws of God; to proceed according to Scripture lights; and to make and repeal orders for smaller matters, not particularly determined by Scripture, according to the general rules of righteousness. In pursuance of these Scripture lights, they declared idolatry, blasphemy, witchcraft, and being a stubborn son, capital crimes; substituted the Jewish for the English rules of inheritance; and made a law of divorce of almost Asiatic liberality.

In the greater part of the English dependencies, the power of subordinate legislation is not retained, as in the Crown colonies; nor delegated to the Local government, as in India; but is divided between the Home government

* Maryland Charter.

† Connecticut Charter.

‡ Rhode Island Charter.

and a local government, partly appointed by the Crown, and partly elected by the people.

Mr. Lewis states, that if the Crown once associates with itself in the subordinate government of a dependency, a body chosen by the inhabitants of that dependency, it cannot thenceforth legislate alone. And the case of Campbell *v.* Hall (20 *Howell's State Trials*, 239), fully supports this position. This case is so remarkable, that we will give a short outline of it. Grenada was conquered in 1762, and ceded by the Peace of Paris in 1763. As a conquest, it was a Crown colony. The Crown, however, resolved to communicate its powers to a local representative government. It issued letters-patent, dated April 9, 1764, appointing Mr. Melville governor, and authorising him, as soon as the situation and circumstances of the island would admit, to call an assembly, to be elected by the freeholders; and with the advice of that assembly, and of his council, to make laws for the government of the island;—such laws not to be repugnant but, as near as might be, agreeable to those of Great Britain, and to be valid unless disapproved by the Crown. It was thought, however, that the island ought to be subjected to the $4\frac{1}{2}$ per cent. duty on exports, paid by the other Leeward islands, and that the difficulty of obtaining the consent of a popular assembly might be obviated, by imposing the tax before it was summoned. By a royal proclamation, therefore, dated July 20, 1764, the duty was imposed. In December 1764 Mr. Melville reached the island, and in the end of 1765 an assembly was summoned and elected.

Payment of the tax was refused, and the Court of King's Bench, after three solemn arguments, supported the refusal. Lord Mansfield admitted, that if the dates of the instruments had been reversed, if the Order in Council imposing the tax had been issued before the letters-patent authorising the governor to summon an assembly, the tax would have been lawfully imposed; but he added that—

> by the commission to Governor Melville, the king had immediately and irrevocably granted to all who did or should inhabit, or who had or should have property in the Island of Grenada—in general, to all whom it should concern—that the subordinate legislation over the island should be exercised by the assembly with the governor and council, in like manner as in other provinces under the king.

It appears, therefore, that the existence or even the mere promise of a legislative assembly, fundamentally and, as far as the Crown is concerned, irrevocably alters the constitution of a dependency. It adds to the monarchical element, the democratic with its vast benefits, but also with its certain difficulties, and its far greater dangers. It may be supposed, therefore, that it is with great caution that such an institution is created or legalised. And such is the case at present. The Crown cannot be accused of being too ready to communicate its powers. But no such caution was exercised, until it was frightened by the American revolution. Almost all the dependencies acquired before that event, either were suffered to assume for themselves representative institutions, or received them by express grant from the Crown. Virginia set the example in 1619. The inhabitants, of their own authority,

elected representatives, and invested them with legislative power; and the home government was forced to ratify their act. Massachusets did the same in 1634, and with equal success, and Connecticut in 1638; and at length it became almost a maxim of English policy, that the inhabitants of a dependency ought to have a share in their own government. Gibraltar, as a mere military post, and Minorca and our Asiatic possessions, as inhabited not by Englishmen, but by a population supposed to be unfit for self-government, were left under the control of the home government; but, with these exceptions, we doubt whether in 1776 there was an English dependency in which a portion of the legislative power was not possessed by representatives elected by the people.

The foreign relations of a dependency are usually managed by the supreme government. The subordinate government cannot make war, or peace, or alliances. The most remarkable exceptions to this general rule are to be found in India; where the European rulers have always allowed, and, in consequence of the difficulty of communication, probably always will allow, great freedom of action to the local authorities. The dominant country also, in general, reserves to itself the regulation of the trade of the dependency. It is admitted that no dependencies have been treated so liberally as those of England; but the degree in which their commerce and industry have been cramped, and misdirected, by the supreme government, will scarcely be believed by our grandchildren. Our American dependencies were not allowed to import

European commodities from any foreign country; they were not allowed to export to any foreign country their own staple commodities. Some of these they were forced to send to the only market open to them—the mother-country—in the form most cumbersome and most subject to loss and depredation. They were forbidden, for instance, to refine their sugar, or to convert their iron into steel. They were not allowed to send from province to province by water, or by means of carriages or horses, their own domestic manufactures. Indeed, as far as possible, they were prohibited from manufacturing. 'They had no business,' said Lord Chatham, 'to make a horseshoe or a nail.' But, as to all other matters, the supreme government interfered little with their internal concerns. We have seen that in many colonies it allowed representative institutions to arise by the mere will of the inhabitants; that in almost all the others which existed before the American revolution, such institutions were created by the Crown; and that the existence of such an institution is an irrevocable bar to the absolute legislation of the home government. And though, of course, it cannot destroy the power of Parliament, it is a strong moral restraint on that power. 'Parliamentary legislation,' says Lord Glenelg, in his Instructions to Sir F. Head—which contain the deliberate opinion of a great statesman on the principles of colonial government—'on any subject of exclusively internal concern to any British colony possessing a representative assembly, is, as a general rule, unconstitutional. It is a right of which the exercise is reserved for extreme cases,

in which necessity at once creates and justifies the exception.' *

Having stated the modes in which the principal political power—that of legislation—is exercised in a dependency, Mr. Lewis considers the general nature of the laws which are its result. They may be divided into the systems which usually prevail in a colony, and those which usually exist in a conquered country—most dependencies being the one or the other.

Colonists (says Mr. Lewis) take out with them the laws of the mother-country, from the necessity of the case. It is necessary for them to have some system of law regularly administered; and what other system could they adopt? They could not create off-hand a new body of laws; and there are no persons among them who are acquainted with any foreign system of jurisprudence, so as to be able to administer it. Moreover, the system of law under which they have hitherto lived, to which they have been accustomed, and which is expressed in their native language, is, on the whole, the best suited to their wants, however different the circumstances of the colony may be from those of the mother-country.†

The only attempt of colonists to establish at once a system of laws different from that of the mother-country was made by the New England settlers, when they proposed, as we have already stated, to make the Mosaic Law their model. In this, however, they seem to have been guided by a belief not so much of the convenience of that law as of its sanctity. Nor did they act up to their expressed intentions. They introduced little of the civil law

* Parliamentary Papers, 1839. No. 118, p. 7. † P. 201.

of Leviticus, and only a portion of the criminal law. Colonists, if left to themselves, usually adopt the criminal law of their mother-country, almost completely. It is comparatively simple and well-known, and they are accustomed to it. Besides which, it does not admit of delay. If theft and violence be prevented, a small society may go on, though their civil rights and obligations are ill-defined; but it must fall to pieces immediately, or be kept together by a despot, if evildoers are left unpunished, or are punished arbitrarily.

They can adopt, however, only a portion of the civil law. Much of that law is local. The English law of Copyholds, for instance, could not be transferred. It has grown up gradually by usage in the different manors, and scarcely agrees perfectly in any two. Another remarkable English institution, the jurisdiction and practice of the Court of Chancery, cannot be usefully transferred to a young society. It is too intricate, too dilatory, and too expensive. Attempts have been often made to introduce it, and the Governor has presided as chancellor; but the result has been mischievous, or at least unsatisfactory. Poor-laws have been rejected as unnecessary, tithes as oppressive, and bankrupt laws as unfavourable to the supposed interests of the most active part of the community. All the Spanish, Portuguese, and French colonists carried with them their religious intolerance; but in most of the English colonies, the attempt to establish a privileged church has failed.

At the very beginning, therefore, the civil laws of a colony

must materially differ from those of the mother-country; and the difference perpetually increases in consequence of the changes which each makes in that part of its laws which at first is common to both. France has completely altered the laws which, two centuries ago, she transferred to Lower Canada; and Holland those which she gave to Demerara. While the parent-state is enacting laws which are not communicated to the colony, the colony is pursuing its own course of separate legislation. Its wants, its dangers, its pursuits, its habits of thinking and of feeling —in short, the whole structure of its society—are different from those of an old country, and necessarily require different laws. Those laws, too, require more frequent and greater alteration—they are the clothes of a child. During the hundred years which immediately succeeded the accession of George I., no material change was made in the laws of England. We now, indeed, look back at the oligarchy, the intolerance, the corruption, the barbarous commercial and the sanguinary penal code of that period, with disgust. Still it was a time of great prosperity. No colony could have prospered for a century with institutions so little modified.

When a dependency is related to its dominant country not as a colony, but as a conquest, it retains, as we have seen, its existing laws, unless and until they are altered by the conqueror.

Inasmuch (says Mr. Lewis) as many independent states, and many dependent colonies of other states, have become English dependencies, many of the English dependencies have retained

wholly, or in part, foreign systems of jurisprudence. Thus, Trinidad retains much of the Spanish law; Demerara, the Cape of Good Hope, and Ceylon retain much of the Dutch law; Lower Canada retains the French civil law, according to the *coutume de Paris*; St. Lucie retains the old French law, as it existed when the island last belonged to the French; Mauritius retains such of the French codes as were extended to it: Malta, which was a municipality of the kingdom of Sicily, retains the old Sicilian law, as modified by the subsequent legislation of the grand-masters; the Ionian Islands retain much of their old Venetian law; and the dominions of the East India Company retain much of the Hindoo, Mahometan, and other native systems of law and legal usages.*

A long-peopled dependency, like India or Malta, where those connected with the dominant country by birth or by descent must always be a small minority, may continue for an indefinite period subject to its ancient laws. But a dependency which is also a colony must in time give them up. The immigrants from the dominant country are from the beginning the favourites of the local government; they are acute in discovering the faults of strange institutions, and are seldom able and never willing to find their merits. It is obvious that, when they have acquired the preponderance of influence and numbers, they will substitute for them the laws with which they are familiar; and, generally, they manage to do so even while they are a minority. The Dutch laws of New York, and the French laws of Louisiana, were abolished long before the Anglo-Americans were a majority; and it is probable that

* Parliamentary Papers, 1839. No. 118, p. 204.

Lower Canada will be governed by English laws before its population has ceased to be principally French.

We have seen that a supreme government seldom legislates for its dependencies. The executive functions which it performs for them are usually confined to the management of their political relations, their military defence, and the providing for them a supreme civil court of appeal. All other executory acts, both administrative and judicial, it leaves to the subordinate governments. It wants the knowledge, and sometimes the power, which are requisite to their due performance. It is, in fact, to supply this want that a subordinate government is created. If the want do not exist—if the supreme government be fit to take an active part in the administration of the dependency, it ought to administer it directly, without interposing an intermediate authority.

The administrative functions delegated by the supreme to the subordinate government may be performed principally by the part of that government which is on the spot—that is to say, by the local government, or principally by the home government.

Results of great magnitude follow as the one or the other method is adopted, particularly if the dependency be also a colony; for in a colony the duties of administration are more numerous and more important than in an old country. Among them are the management of wild lands, and the construction of public works. The first of these does not exist in an old country, and the second may generally be best entrusted to the skill, enterprise,

and economy of individuals. In a new country, their due performance, neglect, or mismanagement is the principal source of prosperity or failure to the collective society, and to almost every one of its members. Such a country, though it may have no human enemies, is in a state of perpetual warfare with the desert and the elements. The government must provide the greater part of the capital with which the contest is to be carried on—must direct its application, and preside over the distribution of the conquered territory.

Again, the pursuit and detection of crime, which in an old country may be left to the injured party, in a new one, where no one has leisure to act as accuser, always devolves on the government. Again, an old country is little affected by immigration. Whether it repel aliens, which we did formerly, or admit them freely, according to our present policy, scarcely any perceptible difference will follow. But the whole character of a colony may be altered by the immigration of a few years. In a few years, the strangers may outnumber those whom they found there; they may double the value of their lands, double their capital in amount, and still more in effectiveness, and change their villages into towns, and their towns into cities: but, at the same time, they may overmatch them in the struggle for local social eminence, elbow them out of the most lucrative positions in trade and in professions, and alter the whole tone and feeling of the society. This may be called an extreme case, though it is one that has occurred over and over again, and, indeed,

is now actually taking place. But its mere possibility accounts for the high importance which the inhabitants of a colony attach to the conduct pursued by their government towards immigrants. Lastly, in a society in which there is little superiority of wealth or birth, the great source of distinction is office. In England, not one in twenty among the educated classes would accept office, not one in a hundred ever thinks of it; and of those who attain it, not one in a thousand feels that the mere fact of his being in the employment of the government gives him a higher social rank. In Canada, all above the lowest class are anxious for office, because all who obtain it instantly rise above their former equals. Under such circumstances, the local government of a dependency which is a colony, or, like Malta, is in many respects of the nature of a colony, is its soul. Every inhabitant sees that his own failure or success in life may depend on its measures. He has an interest, therefore, in public affairs, and a desire to influence them, far beyond what is felt even in the constitutional parts of Europe.

A few instances may be mentioned, in which what appears to be the natural course has been followed; and the performance of the administrative functions—which the supreme government has thought itself forced, by its distance from the place of action, to delegate—has been left principally to the local government. This is now the system of England with respect to India; this was formerly her system with respect to her colonies on the continent of America. That portion of the subordinate

government which resided in the dominant country—or, according to Mr. Lewis's nomenclature, the home government—exercised little control over the proceedings of the local government; indeed, took little notice of them. It allowed the people in every case to elect their House of Assembly, often their Council, and sometimes their Governor. It left to them the nomination, directly or indirectly, of almost all their subordinate officers. It even allowed the separate provinces to form alliances with one another. Under this system of neglect, they flourished as scarcely any communities had ever flourished before. Under this system they bred a race of public men who have had no successors, and formed a national character the best part of which is now lost, and the worst exaggerated.

But this example of non-interference was partial and transient. At scarcely any other time, and in scarcely any other place, has a home government been so forbearing.

With the bright exception which we have noticed, it has almost always appointed all its officers, and allowed them to hold office during its pleasure. In the absence of representative bodies, this makes them the blind instruments of the home government. The governor, indeed, is restrained by his council, and the council by the governor; but he home government, which directly appoints the governor, and directly or indirectly the council, is restrained by nothing but Parliament. Again, the governor is almost always a native of the dominant

country, and so are generally his principal officers. In Spanish America no one was admitted to any office of importance unless a native Spaniard; even Spanish Creoles were excluded. Nearly the same may be said of British India. And even when a representative assembly exists, the extent to which a home government, acting through this compact body of its own officers, may conduct the administration of a dependency, without any reference to the wishes of its inhabitants, may be seen from the following extract from one of the most able State Papers of modern times, Lord Durham's Report on Lower Canada:—

The governor (says Lord Durham) is, in fact, a mere subordinate officer, receiving his orders from the Secretary of State, responsible to him for his conduct, and guided by his directions. Instead of selecting a governor with an entire confidence in his ability to use his local knowledge of the real state of affairs in the colony in the manner which local observation and practical experience best prescribe to him, it has been the policy of the Colonial Department, not only at the outset to instruct a governor as to the general policy which he was to carry into effect, but to direct him from time to time, by instructions sometimes very precise, as to the course which he was to pursue in every important particular of his administration. It has been the policy of governors to endeavour to throw responsibility as much as possible on the home government, and to do as little as possible without previously consulting the Colonial Minister at home, and receiving his instructions. It has, therefore, been the tendency of the local government to settle everything by reference to the Colonial Department in Downing Street. Almost every question on which it was possible to avoid, even with great inconvenience, an immediate decision, has been habitually a subject of reference; and this applies not merely to those questions on which the local executive and legislative bodies happened to differ, wherein the

reference might be taken as a kind of appeal, but to questions of a strictly local nature, on which it was next to impossible for the Colonial Office to have any sufficient information. It has become the habit of the Colonial Office to originate these questions, to entertain applications from individuals, to refer these applications to the governor, and on his answer to make a decision. The governor has been enabled, by this system, to shift responsibility on the Colonial Office, inasmuch as in every important case he was, in reality, carrying into effect the order of the authority to which he was responsible. But the real vigour of the executive has been essentially impaired: distance and delay have weakened the force of its decisions, and the colony has in every crisis of danger, and almost every detail of local management, felt the mischief of having its executive authority exercised on the other side of the Atlantic. The most important business of government has been carried on, not in open discussions or public acts, but in a secret correspondence between the governor and secretary-of-state. Whenever this mystery was dispelled, it was long after the worst effects had been produced by doubt and misapprehension; and the colonies have been frequently the last to learn the things that most concerned them, by the publication of papers on the order of the British Houses of Parliament.*

Having examined the nature of a dependency, its relation to the subordinate government to which it is subject, and to the supreme government on which it is dependent, and the manner in which those governments respectively exercise towards it their legislative and executive powers, we proceed with Mr. Lewis, though not exactly in the same order, to consider the advantages and disadvantages which this relation brings with it, to the dominant country and to the dependency. We will begin with the dependency.

The principal—indeed the only material—advantage

* Parliamentary Papers, 1839. No. III. pp. 37–39.

which a dependency derives from its connection with a dominant country, is protection. And this may be very great.

Few of the British dependencies are even now capable of self-protection. If abandoned by England, almost all of them would be subjugated by the first foreign power that thought fit to attack them. Many, even if unattacked, are incapable of separate existence. If we had refused to allow our fellow-subjects in New Zealand to form a British dependency, they must have been destroyed by the savage tribes; or have sunk into a lawless community of buccaneers, miserable and demoralised themselves, and mischievous to the rest of the world. Even dependencies which have been powerful enough to assert and to maintain their independence, have sometimes found that independence a curse. Spain misgoverned her colonies—but far less than they have misgoverned themselves. Ever since they threw off her yoke, galling as it was, they have been suffering every year more and more from war, from faction, from tyranny, from anarchy—in short, from every calamity which can arise from the utmost mismanagement both of internal administration and of foreign relations.

To protection Mr. Lewis adds pecuniary assistance, commercial privileges, and the relief which a disinterested supreme government may sometimes give to the bulk of the inhabitants when oppressed by a powerful minority. To the pecuniary assistance, however, he attaches, as it deserves, little importance. The government expenditure of the dominant country may benefit a post

like Gibraltar, but it is of little value when spread over a territory. Nor does he attach much more to the commercial privileges. Of course, as long as the dominant country is absurd enough to favour the produce of the dependency by a system of differential duties, the dependency enjoys an agricultural or manufacturing privilege. But this is usually bought dearly by the restrictions imposed on its foreign trade. Still, cases may be cited—Jersey and Guernsey are among them—in which a dependency has been allowed both free access to the ports of a rich dominant country, and also a free-trade with the rest of the world. But such cases are very rare. They suppose that the conduct of the dominant country towards the dependency is not merely different from that which usually accompanies such a relation, but is actually its reverse. They suppose that the interests of the dominant country are avowedly sacrificed to those of the dependency—not those of the dependency to those of the dominant country. The Channel Islands owe their privileges to their small size, their proximity to France, and their military importance.

The last advantage suggested by Mr. Lewis is of unusual occurrence. The case to which he alludes, the abolition of slavery in the British dependencies, is certainly an instance. The extinction of slavery was eminently beneficial to the bulk of the inhabitants, and the transition to freedom was effected by the supreme government with less suffering to both parties than must have been the case if it had been forced on by any other means within so short

a period. But, on the other hand, it must not be forgotten first, that, for many years, it was only the power of Great Britain that enabled the small minority of masters to keep down the bulk of the inhabitants. Had the British garrisons been withdrawn, slavery would have withdrawn with them. Secondly, that one of the worst incidents to slavery, the slave trade, was actually at one time imposed by England on some of her dependencies. The local governments of more than one of them passed bills for its abolition, to which the home government refused its assent. And, thirdly, that the principal means by which the transition was effected with such comparative ease, was the payment by the British nation of a compensation, enormous in its positive amount, however inadequate it may have been to the loss sustained; and that this payment was obtained by means of an instrument which can seldom be applied beneficially, or even safely, to political purposes, religious agitation. In fact, the religious feeling in the dominant country, which certainly benefited the dependencies by giving emancipation to the slaves, and the price of emancipation to the masters, has since shown its power of injuring them. Under the influence of one set of missionaries, it has deprived the West Indian colonies of a supply of free labour; under that of another, it has seriously retarded, and even endangered, the colonisation of New Zealand; and, wielded by the High Church and Tory party, it inflicted on Canada the Clergy Reserves.

We now proceed to a subject far more extensive—the

disadvantages of Dependencies. Mr. Lewis divides them into those which naturally follow from dependence, and therefore are, or may be, universal; and those which are respectively incident to the different forms of subordinate government, and therefore must be particular.

He considers the first as arising from two causes—the ignorance of the dominant country as to the position and interests of the Dependency, and its indifference to them.

The dependency (says Mr. Lewis) is necessarily separated from the dominant state by the distinctness of its immediate government; and, owing to this necessary separation, the inhabitants of the dominant state are naturally more indifferent and ignorant about the concerns of the dependency than about those of any district of their own country. But the ignorance and indifference consequent upon this necessary separation are often increased by accidental causes, which estrange the dominant country from the dependency. It often happens, for example, that the two countries are divided by distance; or that the dependency is too insignificant and obscure to attract the attention of the dominant country; or that the inhabitants of the two countries are of different races, and speak different languages; and that their religion, their morals, and manners, or their laws and other political institutions, are more or less dissimilar. Not only does the dominant country know little of their concerns, but it has little desire to know anything of them. Men's sympathies are in general too narrow to comprehend a community which is distinct from their own, although it may be ultimately subject to the same supreme government. Accordingly, the maxim that government exists for the benefit of the governed, is generally considered by the immediate subjects of a supreme government as applicable only to themselves; and it is often proclaimed openly, that dependencies are to be governed, not for their own benefit, but for the benefit of the dominant state.

Nor are the ignorance and indifference of the dominant country

about the concerns of the dependency limited to the supreme government. Hence, if any dispute should arise between the dependency and the supreme government, and if the dependency should appeal from the government to the people of the dominant state, it will probably find that it has not appealed to a better-informed or more favourable tribunal. On the subject of the dispute, the people of the dominant country can scarcely be so well informed as their government; and in any struggle for power between their own country and the dependency, they are likely to share all the prejudices of their government, and to be equally misled by a love of dominion, and by delusive notions of national dignity.*

The principal disadvantages to which a Dependency, as such, is necessarily or naturally exposed, are divided by Mr. Lewis into five. Its liability—1. To its laws being invalidated by technical objections; 2. To an improper introduction of the laws, language, or religion of the dominant country; 3. To having its higher offices filled by strangers; 4. To its interests being sacrificed to the factions of the dominant country; 5. To its being involved in its wars.

The first inconvenience is peculiar to subordinate legislation. The enactments of a supreme government may be good, or may be bad, but at all events they are laws. The decisions founded on them are legal; the rights which such decisions have given are safe. The law itself is safe, until the government believes it to be inconvenient. Subordinate legislation may be set aside without any reference to its convenience; and when it is set aside, all

* Pp. 252–254.

that has been done under it is void—all that has been acquired under it is insecure.

Again, a Dependency is either a colony or a conquest. In the first case, the colonists, as we have seen, carry with them so much of the law of the parent country as is applicable to their circumstances. Mr. Lewis shows that this rule is so vague, that in almost every new case its application must be left to the discretion of the judge. To which he adds, that a colony loses the advantage of the progressive legislative skill of the mother-country. The English criminal law was introduced into Canada in 1774. Since that time we have almost reconstructed it; removed many of the absurdities of its procedure, and almost all the cruelty of its punishments; but none of these improvements apply to Canada. On the other hand, if a Dependency be a conquest, it retains in the first instance, as we have seen, so much of its existing law as is not inconsistent with the fundamental principles of the laws of the conqueror. But these fundamental principles have never, at least as respects England, been defined. It is difficult to say what laws of foreign origin are inconsistent with them; and still more difficult to say what are not. This doubt, joined to the natural belief of the dominant country in the superiority of its own institutions, leads it to substitute them for those of the Dependency, and thus creates the second in Mr. Lewis's list of disadvantages.

In deciding (says he) how far the native institutions of a ceded or conquered dependency should be maintained, and how far the

institutions of the dominant country shall be introduced in their stead, the persons conducting the government of such a dependency have strong inducements to adopt the latter course. It is far easier to administer law with which one is familiar, than law which one has to learn. It is far easier to carry on the business of government in one's own language than in a foreign language. Moreover, it requires a considerable sacrifice of self-love, or some magnanimity, for a ruler to subject himself to the necessity of going to school, and to place himself voluntarily in a situation of inferiority, in respect of knowledge, to the persons whom he is going to govern. Whereas, if the opposite system be adopted, the ruler is placed in a situation of almost immeasurable superiority to the natives, inasmuch as he is as far superior to them in knowledge as in power. Furthermore, there is the disinterested attachment which most men acquire for the institutions of their native country, partly from being habituated to live under them, and partly from being accustomed to hear them extolled, and to be told that it is patriotic to admire and love them.*

The forcible introduction into a conquered Dependency of the language or the religion of the conqueror, must always be wrong. The introduction of any large portion of its laws is usually wrong. For a time it throws everything into confusion. The local practitioners and courts know nothing of the new law; the lawyers and judges sent out from the dominant country know nothing of the old law; and yet each must have to do with both, since the people are to be governed as to the past by the one, and as to the future by the other. The old law, too, is usually best suited to the habits of the people, and always to their feelings; and unless a law be cheerfully, it will be imperfectly, obeyed.

* P. 261.

Again, with its laws, the dominant country must send out those who are to administer them. These persons, if fit for their trust, must be highly paid, for they are to practise in exile what would be a lucrative profession at home. But this implies the great evil of expensive courts.

As an example of the extent of such evil, we will quote Mr. Macaulay's description of two of the supreme courts of British India:—

Till 1836, an Englishman at Agra or Benares, who owed a small debt to a native, who had beaten a native, who had come with a body of bludgeon-men and ploughed up a native's land, if sued by the injured party for damages, was able to drag that party before the supreme court; a court which in one most important point, the character of the judges, stands as high as any court can stand, but is ruinously expensive. Judicial corruption is indeed a most frightful evil; yet it is not the worst of evils. A court may be corrupt, and yet it may do much good; indeed, there is scarcely any court so corrupt as not to do much more justice than injustice. A sullied stream is a blessing compared to a total drought; and a court may be worse than corrupt—it may be inaccessible. The expenses of litigation in England are so heavy, that people daily sit down quietly under wrongs, and submit to losses rather than go to law; and yet the English are the richest people in the world. The people of India are poor; and the expenses of litigation in the Supreme Court are five times as great as the expenses of litigation at Westminster. An undefended cause, which might be prosecuted in the Court of Queen's Bench for 8*l.*, cannot be prosecuted at the Supreme Court under 40*l.* Officers of the court are enabled to accumulate, in a few years, out of the substance of ruined suitors, fortunes larger than the oldest and most distinguished servants of the Company can expect to carry home after thirty or forty years of eminent services. I speak of Bengal, where the system is now in full operation. At Madras, the Supreme Court has, I believe, fulfilled its mission; it has done its work; it has beggared every rich native

within its jurisdiction, and is inactive for want of somebody to ruin.*

That all its higher offices should be filled by natives of the dominant country, is not a necessary incident to a Dependency; but its occurrence is so frequent, that it may be called a natural one. Malta may be considered a fair example of the conduct of England. It is inhabited by a people of ancient civilisation, without any material intermixture of English settlers, using their own language and laws, and for centuries, until it fell into our hands, independent. It is too small and poor to excite any fear; and therefore, on the one hand, it affords no pretext for the introduction of strangers to keep down the natives; and, on the other hand, it has no means of resisting such an introduction. From Lord Glenelg's despatch of March 27, 1838,† it appears that at that time 670 persons were employed in the Civil Service of Malta: of these, 28 were Englishmen, and 642 Maltese; but that the average official income of each Englishman was 523*l.* 15*s.* 6*d.*, and of each Maltese 42*l.* 1*s.* 11*d.*

The Commissioners appointed to enquire into the state of Malta report,

That the systematic exclusion of natives from superior offices has made them a degraded class in their own country. It has lowered them in the estimation of Englishmen and foreigners, and

* Minutes of the Supreme Government of India on Article XI. of 1836, p. 20. Parliamentary Papers, 1838, No. 275.

† Report on Affairs of Malta, Part II. p. 27. Parliamentary Papers, 1838, No. 141, ii.

even in their own estimation; and, in short, it has produced the evil consequences which were produced in Ireland by the civil disabilities imposed upon Catholics by the law.

The appointment of natives to superior offices, combined with the principle of departmental promotion, would not only elevate the character of the Maltese, by opening a career to native merit, but would also increase the efficiency of the government. According to the system by which the government of Malta has been hitherto conducted, inefficient Englishman have, in many cases, been placed at the head of departments. And this evil was almost inseparable from the system of appointing Englishmen to those departments. Even in the case of a principal office, not demanding the special knowledge which none but a native can possess, it would probably be difficult for her Majesty's government to appoint an Englishman as efficient as many Maltese, who would gladly accept the employment. Englishmen, who have ability and industry to recommend them, naturally prefer employment at home to employment in Malta; and, accordingly, the civil service of the island has been, for the most part, abandoned to persons who, for various reasons, have been unable to succeed in their respective professions, or who have otherwise failed to advance their fortunes in England.

In proof of the truth of the opinion which we have now expressed, we may state that in many, if not most cases, the business of a principal office filled by an Englishman has been performed by one of his Maltese subordinates. In consequence of this vicious arrangement, the revenue of the island has been burdened with a high salary paid to the useless principal; whilst the business has been performed by the subordinate, and less efficiently than it would have been if he had filled the office of his principal, and had been directly responsible.*

The danger of being sacrificed to the party contests of the dominant country, is peculiar to the Dependencies of a

* Report on Affairs of Malta, Part II. pp. 22, 23.

popular government. In absolute monarchies, and pure oligarchies, parties are mere factions, the subjects of dispute are personal and local, and the treatment of the remoter parts of the empire, generally an oppressive one, remains unaltered, whatever be the hands to which it is confided. In a popular government, the opposition, in its constant hunt after grievances, seldom neglects that fertile seat of them, the Dependencies; and the experience of the last twenty years justifies Mr. Lewis in saying, that their administration is attacked and defended, and indeed generally conducted, with reference, not to the welfare of the Dependency itself, or of the dominant country, but to the temporary interests of the contending political parties; 'so that the people of the Dependency become the sport of questions and interests in which they are not concerned, and the nature of which they do not understand.'*

The liability to be involved in the wars of the dominant country, is the only disadvantage of dependence which Mr. Lewis can be accused of exaggerating. War is, without doubt, one of the greatest evils to which human society is exposed. Its frightful, but occasional destructiveness, when it actually occurs, is scarcely more mischievous than the constant waste of capital, intelligence, and labour, occasioned by the necessity of being always fit to encounter it. At this instant, after more than thirty years of profound peace, there is probably no European monarchy which does not employ, for military purposes, more than half its public revenue; that is to say, which

* P. 284.

does not spend in barren and constantly-recurring preparation for war, more than on all the means by which the morals, the intelligence, the health, the comfort, and the general welfare of its people are promoted. But a Dependency is not more subject to any of these evils than a sovereign state. If it be dragged into the wars of its dominant country, it escapes those to which, if left to itself, it would have been exposed by its own vanity, its own ambition, or its own weakness. It generally escapes the enormous waste of military expenditure in time of peace. And when war does occur, the fleets and armies which protect it are mainly provided and maintained by the dominant country. War always diminishes the prosperity of a sovereign state—it sometimes increases that of a Dependency.

We now proceed to consider the disadvantages affecting Dependencies, in consequence of the forms of their local governments, and the uses made by dominant countries of those forms—disadvantages differing of course as these forms differ, and as they are differently used by the dominant country.

The principal difference in local governments is the absence or presence of a representative legislative body. In the former case, the Dependency is exposed to the evils usually accompanying a government over which the governed have no constitutional control—evils great in a sovereign state, greater in a Dependency, greater still when that Dependency is also a colony; and probably at their maximum when it is a conquered colony, differing

in language, in laws, in religion, and in habits and feelings, from its conquerors. The local governor is a stranger, in the last case a foreigner. He comes with little knowledge, and goes before he has learned much of the concerns of his temporary subjects; or has unlearned many of the prejudices which he brought with him. His principal officers are more permanent. They are generally men who intend to settle in the Dependency, or at least to remain there until they have accumulated fortunes. Sometimes they are appointed and removable by the governor; but usually they are the nominees of the Home government, and hold office at its pleasure, which is in fact for life. Sometimes the governor cannot act in important matters without their concurrence; but in general he may disregard their advice, being bound, however to record it. But Mr. Lewis remarks, with truth, that the question whether the governor be or be not subject to the legal control of his permanent officers, is not of much practical importance. It is through them that the traditional routine by which the details of administration are managed, is kept up. The governor naturally relies on them for information and advice; they form the society in which he lives. He is dependent on their sympathy as much as on their assistance. We agree, therefore, with Mr. Lewis, that—

> Whenever the executive government is uncontrolled by a body representing the community, all the powers of the local government will in general be vested formally or virtually in the hands of an oligarchy of the worst description—an oligarchy unchecked

by public opinion, and, if its members are not natives of the dependency, having little or no knowledge of the real condition and true interests of the governed, and little or no sympathy with their opinions and feelings.*

Having considered the consequences of the absence of local representative bodies, we proceed to those which follow from their presence. They depend much on the conduct of the subordinate government. That government may govern either by means of the representative body, or in spite of it, for there is no middle course. No legislative body elected by the people, confines itself to the mere business of legislation. At first, perhaps, it claims only the right to superintend the administration of the country, to complain of grievances, and to petition for remedies; but it soon demands the power of controlling it. It soon demands that the principal executive officers shall possess its confidence—that is to say, that they shall be taken out of its own body, or rather out of the majority of that body, or at least be removable at the will of that majority. To concede this, is what we have called governing by means of the representative body. This is the government of England and of France. In France the Crown, in England the Crown and the Peers, may moderate, and, in some measure influence, the action of the will of the Deputies and of the Commons; but they do not resist it.

On the other hand, if the representative body be not allowed virtually to rule, it becomes an opposition. In a

* P. 293.

really independent country—that is to say, a country not kept down, like the constitutional states of Germany, by the fear of foreign intervention,—the consequence is either the submission of the government, or a civil war, or a revolution; for the representatives, by stopping the supplies, produce an immediate crisis. If the government raise them by force, this is civil war, if it be resisted; or a revolution, if it be acquiesced in. But this weapon is almost powerless in the hands of the representatives of a dependency. The whole of its military, and a great part of its civil expenditure, is defrayed by the supreme government of the dominant country; and that government often retains in its hands the collection and application of a considerable revenue, which appears naturally to belong to the dependency—such as the produce of its import duties, the rent of its mines, and the purchase-moneys and quit-rents of its wild lands. The subordinate government, therefore, suffers comparatively little inconvenience from the want of that portion of its supplies which the assembly can refuse. Without the concurrence of the assembly, it cannot indeed legislate; but it can, and often does administer. This is what we have called governing in spite of the representative body. From the American Revolution until the publication of Lord Durham's Report, this was the system usually adopted in the British Dependencies possessing representative constitutions.

This appears to us to be the worst form which the government of a Dependency can assume. The integrity

and prudence of the subordinate government may somewhat correct the inconveniences of the system on which it proceeds. Canada was better governed by the Colonial Office and its nominees, than Sicily by Verres, or than Mexico and Peru by the Spanish Viceroys and the Council of the Indies. But great mischief is unavoidable.

There is a great tendency (says Mr. Lewis) to a misconception of the character and powers of a subordinate government. The relation of a subordinate to a supreme government is a complicated relation, which the people both of the dominant country and the dependency are likely to misunderstand; and the incorrect notions entertained by either party, are likely to give rise to unfounded expectations and to practical errors in their political conduct. It is the duty of the dominant country to do everything in its power to diffuse correct opinions, and to dispel errors respecting its political relations with the dependency; and, still more, to avoid creating an error on this subject, since, in case of any collision between the dominant country and the dependency, which an error on this subject is likely to produce, the weaker party, that is, the dependency, can scarcely fail to be the chief sufferer. Unless the dominant country should be prepared to concede virtual independence, it ought carefully to avoid encouraging the people of the dependency to advance pretensions which nothing short of independence can satisfy. If a dominant country grants to a dependency popular institutions, and professes to allow it to exercise self-government, without being prepared to treat it as virtually independent, the dominant country by such conduct only mocks its dependency with the semblance of political institutions without their reality. It is no genuine concession to grant to a dependency the names, and forms, and machinery of popular institutions, unless the dominant country will permit those institutions to bear the meaning which they possess in an independent community; nor do such apparent concessions produce any benefit to the

dependency, but, on the contrary, they sow the seeds of political dissensions, and perhaps of insurrections and wars, which would not otherwise arise.*

In the contest which necessarily takes place between the representative assembly and the local government, each party fights its battle at the expense of the people, *Delirant reges, plectuntur Achivi.* The local government selects for its officers, not those who are most fitted for the public service, but those who are most obedient to its orders—those whose insignificance shelters them from unpopularity, or whose callousness enables them to brave it. It hears with prejudice the advice of those who are best acquainted with the concerns of the Dependency, or refuses to listen to them at all. As it knows that all its intentions will be misrepresented, and all its measures thwarted, it endeavours to escape responsibility by inaction, or by referring every question to the home government.

The home government, anxious also to escape responsibility, and perplexed by its ignorance of the elements on which a decision ought to be founded, is equally irresolute, and equally procrastinating. Sometimes it returns a vague answer, which the local government is to interpret as it can—sometimes it delays deciding, until the time for useful decision has past—sometimes it is swayed by the suggestions of half-informed or interested advisers—and sometimes it adopts the conduct which is best suited, not to the Dependency, but to the House of Commons—the conduct which is not the most beneficial, but which can be the

* P. 314.

most easily defended, which can be justified by some precedent, or which promotes the interests of some influential party, or which flatters the prejudices of the English public. If the administration of the Dependency were despotic, it would probably be vigorous; if it were popular, it would be well informed; but the system which we have described combines the faults of both—the ignorance and carelessness of a despotism, and the weakness and vacillation of a democracy.

On the other hand, the local assembly, urged by the fierce passions which influence provincial party spirit, and undeterred, as Mr. Lewis has well remarked, by the sense of responsibility which moderates those who hope themselves to take office, pursues a course which, in an independent state, no Opposition would venture, and no Public would tolerate. Sometimes it stops altogether the supplies which lie within its power—sometimes it appropriates them to corrupt or party purposes—sometimes it refuses to take part in any legislation whatever—sometimes it will pass laws only for a year or for six months, and then refuses to renew them; or it tacks the renewal of a necessary law to an enactment, which it knows that the other branches of the subordinate government must reject. It tries to frighten or worry the public officers into resignation, by impeachment; and selects for its attack those whose ability renders them most useful to its own enemy—the subordinate government. Its object being not to improve the existing system, but to subvert it, it strives to make that system impracticable, by rendering it odious;

and to render it odious, by making it produce the least amount of good, and the greatest amount of evil, of which it is capable.

It is easy to theorise on such a state of things, and to predict the fate of the unhappy province thus made the seat of a chronic civil war; but we can support the theory by experience. Lord Durham visited two countries not dissimilar in natural advantages—each possessing representative assemblies, but differing in this, that for the last seventy years these assemblies have been allowed to manage the internal affairs of the one and have not been allowed to manage those of the other. The countries to which we allude are of course the United States and the British North American provinces. Lord Durham states, in the following words, 'the contrast between the American and the British sides of the frontier, in every sign of productive industry, increasing wealth, and progressive civilisation.'

By describing (he says) one side of the frontier, and reversing the picture, the other would be also described. On the American side all is activity and bustle. The forest has been widely cleared; every year numerous settlements are formed, and thousands of farms are created out of the waste; the country is intersected by common roads; canals and railroads are finished, or in the course of formation; the ways of communication and transport are crowded with people, and enlivened by numerous carriages and large steam-boats. The observer is surprised by the number of harbours on the lakes, and the number of vessels they contain; while bridges, artificial landing places, and commodious wharfs, are formed in all directions as soon as required. Good houses, warehouses, mills, inns, villages, towns, and even great cities, are

almost seen to spring up out of the desert. Every village has its school-house and place of public worship. Every town has many of both, with its town-hall buildings, its book-stores, and probably one or two banks and newspapers; and the cities with their fine churches, their great hotels, their exchanges, court-houses, and municipal halls, of stone or marble, so new and fresh as to mark the recent existence of the forest where they now stand, would be admired in any part of the Old World. On the British side of the line, with the exception of a few favoured spots, where some approach to American prosperity is apparent, all seems waste and desolate. There is but one railroad in all British America, and that, running between the St. Lawrence and Lake Champlain, is only fifteen miles long. The ancient city of Montreal, which is naturally the capital of the Canadas, will not bear the least comparison, in any respect, with Buffalo, which is a creation of yesterday. But it is not in the difference between the larger towns on the two sides that we shall find the best evidence of our own inferiority. That painful but most undeniable truth is most manifest in the country districts through which the line of national separation passes for 1,000 miles. There, on the side of both the Canadas, and also of New Brunswick and Nova Scotia, a widely scattered population, poor, and apparently unenterprising, though hardy and industrious, separated from each other by tracts of intervening forest, without towns and markets, almost without roads, living in mean houses, drawing little more than a rude subsistence from ill-cultivated land, and seemingly incapable of improving their condition, present the most instructive contrast to their enterprising and thriving neighbours on the American side. Major Head, the assistant commissioner of the Crown Lands' Inquiry, whom I sent to New Brunswick, states, that when travelling near the frontier line of that province and the State of Maine, now on one side and then on the other, he could always tell on which side he was by the obvious superiority of the American settlements in every respect. This view is confirmed by another fact equally indisputable. Throughout the frontier, from Amherstburgh to the ocean, the market value of land is much greater on the American that on the British side.

In not a few parts of the frontier this difference amounts to as much as 1,000 per cent., and in some cases to even more. The average difference, as between Upper Canada and the States of New York and Michigan, is notoriously several hundred per cent. Mr. Hastings Kerr of Quebec, whose knowledge of the value of land is generally supposed to be more extensive and accurate than that of any other person, states that the price of land in Vermont and New Hampshire, close to the line, is five dollars per acre, and in the adjoining British townships only one dollar. On this side the line a very large extent of land is wholly unsaleable even at such low prices, while on the other side property is continually changing hands. The price of two or three shillings per acre would purchase immense tracts in Lower Canada and New Brunswick. In the adjoining states it would be difficult to obtain a single lot for less than as many dollars. In and near Stanstead, a border township in Lower Canada, and one of the most improved, 48,000 acres of fine land, of which Governor Sir R. S. Milne obtained a grant to himself in 1810, was recently sold at the price of two shillings per acre.

It might be supposed by persons unacquainted with the frontier country, that the soil on the American side is of very superior fertility. I am positively assured that superior natural fertility belongs to the British territory. In Upper Canada the whole of the great peninsula between Lakes Erie and Huron, comprising nearly half of the available land of the province, is generally considered the best grain country on the American continent. The soil of the border townships of Lower Canada is allowed, on all hands, to be superior to that of the border townships of New York, Vermont, and New Hampshire; while the lands of New Brunswick, equal in natural fertility to those of Maine, enjoy superior natural means of communication.*

We now come to the other alternative, that of giving to the representative body the influence over the internal concerns of the country which it would enjoy if that

* Lord Durham's Report, pp. 95, 96.

country were independent. Under this system the subordinate government places its official patronage at the disposition, or at least under the control, of the majority for the time being in the local assembly—assents to its legislation, and in fact, with the exception of its trade, its political relations, and its military defence, allows the assembly to manage all the affairs of the Dependency. This, as we have already stated, was the manner in which our American colonies were governed during the seventeenth and the greater part of the eighteenth century. This is the system demanded by Canada by the name of responsible government; and for the last four years apparently conceded by England.

On this system Mr. Lewis remarks that a Dependency thus governed would, as respects its internal affairs, be independent, except on the rare occasions on which the supreme government thought fit to interfere; and that when such occasions did occur, the Dependency, unaccustomed to control, would resist. We do not see the force of this objection, if it be meant as one. We shall see hereafter that the only real advantages which a dominant country derives from its Dependencies are, first, the security of a commerce uninterrupted by war or by hostile tariffs; and, secondly, an outlet for its emigrant population. But these advantages it retains under the proposed system of general non-interference. Foreign commerce, and the reception of emigrants from the dominant country, are matters which Dependencies always leave to the supreme government, and they are the only matters in which that

government ought to interfere. Everything else should be left to those who are on the spot.

The people of England may think that the people of Canada mismanage their wild lands; that they waste the provincial revenue on public works extravagantly expensive, or ill planned, or, as without doubt is often the case, mere jobs; that they ought to have a privileged church, and that it ought to be endowed with one-seventh of the land. In these opinions the people of England may be right or may be wrong; but what business is it of theirs? There is nothing so disagreeable in private life, or so dangerous in politics, as the restless spirit of meddling which wishes to set every body right. Of course, if the supreme government, or the home government, thinks itself responsible for the due management of the internal affairs of the Dependency, it must constantly interfere in them; but in that case, as we have already remarked, the Dependency ought to be governed directly. It ought to be politically incorporated, send its representatives to Parliament, and throw aside the troublesome machinery of a subordinate government. If this be impracticable it ought to be left to itself. The circumstances which are objections to direct government must be equally objections to interference. The middle course—the half measure of giving to the Dependency a local government, but exercising over that government a jealous superintendence—may flatter the vanity of the dominant country—may gratify it by giving to it the appearance of a vast outskirt of empire—may afford badges for its factions when they want matter of

dispute—may enable it to people its colonies with the refuse of its jails, and to govern them by the refuse of its aristocracy; but there its utility ends.

To say that this system of interference ought to be maintained, in order to promote the welfare of the Dependency, is mockery. It is the argument of every despot. 'My people are not fit to be their own masters. I am responsible for their happiness, and I intend to make them happy, not in their own way, which is absurd, but in mine.' It is far less plausible than the asseveration of Mr. Calhoun, that the negroes of the Carolinas are kept in slavery for their own good.

To say that it ought to be maintained, in order to preserve the connection between the Dependency and the dominant country, is, if possible, still more erroneous. It is a system which places that connection in constant and immediate danger of severance. It is a system under which the inhabitants of the Dependency believe that that connection impoverishes, injures, and degrades them—diminishes the value of their land, capital, and labour—robs them of their rights as citizens, and renders their resentment contemptible, because it is impotent. It is a system in which the dominant country at last considers the Dependency a mere nuisance, a manufactory of complaints, wasting whole days of the public time, of which every minute is valuable; led by demagogues more ignorant, unreasonable, and dishonest, than the worst examples in Europe; in short, as an incumbrance which must be endured, only because it cannot be cast off without wound-

ing the vanity, or, to use the common expression, the honour of the nation. No connection can be safe when such are the feelings on each side.

Having considered the advantages and disadvantages which affect a Dependency, in consequence of its relation to a dominant country, we proceed to those which affect a dominant country, in consequence of its relation to a Dependency. We will begin with the disadvantages. In the first place, the dominant country must protect the Dependency from foreign aggression and from internal disturbance. Even in peace this may be a serious burthen. A few islands in the tropics now occupy more of our troops than are sufficient for the whole of Great Britain. The petty Dependency of Algiers costs France an army of more than 100,000 men, and an annual expenditure of more than three millions sterling. In time of war this expenditure may be indefinitely increased. The Dependencies of an empire are always its most vulnerable points, and the preparation for defence must answer to the danger of attack. Again, Dependencies add to the probability of war even more than they do to its expenses. The greater part of the wars of the last century were colonial. A dispute about a Dependency was the occasion of our war with France in 1803; and disputes about Dependencies have been the principal causes which have threatened war during the last thirty years. Again, partly in order to reconcile the Dependency to the restrictions imposed on its commerce, and partly in consequence of the influence which persons connected with it,

as proprietors, mortgagees, or traders possess in the imperial councils, the dominant country generally gives to the productions of the Dependency a complete or a qualified monopoly in her own markets. In sugar alone, the monopoly thus given by England costs us a million a year in public revenue, and twice that amount in private expenditure. If the account between England and her Dependencies could be stated, and the public and private loss compared with the public and private gain, we believe that the excess of loss would equal the whole remaining cost of protecting and governing the British islands.

Nor must the waste of public time and attention on the internal affairs of the Dependency be forgotten. This, indeed, may be avoided, if the dominant country will give up its habits of jealous interference, and allow the Dependency to manage its own concerns in its own way; but, while those habits last, the inconvenience is considerable. A party contest about the affairs of a colony turned out a Ministry in 1839; and though it returned to power, it never recovered the shock which the Jamaica debate occasioned. Next year, month after month was employed in discussing how the Imperial Parliament ought to deal with the Clergy Reserves of Canada. Night after night we listened to debates as to the meaning of the words, 'a Protestant clergy.' One bishop or Tory peer after another plunged into the dark metaphysics of property: to show that even the under-graduates of Christchurch and Trinity had a vested interest in the colonial provision made by our ancestors for the Anglican Church. Others

excluded from a share of the provision all Presbyterians; since, according to the true doctrine of Apostolic Succession, no Presbyterian minister is a clergyman. Others urged the duty of the supreme government to propagate the religion which they assumed to be exclusively true; to tolerate indeed all other sects, but to endow only the Church of England. We are not dwelling now on the dangers of the discussion, on the probability that a factious vote, meant merely to tease Lord Melbourne, might have lighted up war in Canada, in the United States, and ultimately in Europe; but merely on the waste which it occasioned of public time and attention. The supreme government of the British Empire has not time or attention for half the matters which it necessarily must dispose of. To throw on it duties which could be performed by others is to aggravate one of its greatest defects.

When we consider the magnitude of the evils imposed on the dominant country by the possession of a Dependency, it may be supposed that the advantages, purchased at such trouble, such expenditure, and such risk, must be enormous. That they must be very attractive, that they must be of a kind strongly affecting the imagination, is obvious. We are induced to place at the head of them that which Mr. Lewis places last, 'the glory which a country is supposed to derive from an extensive colonial empire.' We concede, indeed, to Mr. Lewis, 'that a nation derives no true glory from a possession which produces no assignable advantage to itself, or to other communities.' We concede to him—

That if a nation possess a Dependency, from which it derives no public revenue, no military or naval strength, and no commercial advantages, or facilities for emigration, which it would not equally enjoy if the Dependency were independent, and if the Dependency suffers the evils which are the almost inevitable consequences of its political condition, such a possession cannot justly be called glorious.*

We concede all this, and we admit that this is nearly a fair picture of the usual relations between Dependencies and dominant countries. Still we believe that the desire of this glory is the most frequent motive, if not for the acquisition, at least for the retention of Dependencies.

To propose (said Adam Smith seventy years ago) that Great Britain should voluntarily give up all authority over her colonies, and leave them to elect their own magistrates, to enact their own laws, and to make peace and war, as they might think proper, would be to propose such a measure as never was, and never will be, adopted by any nation in the world. No nation ever voluntarily gave up the dominion of any province, how troublesome soever it might be to govern it, and how small soever the revenue which it afforded might be in proportion to the expense which it occasioned. Such sacrifices, though they might frequently be agreeable to the interest, are always mortifying to the pride of every nation. The most visionary enthusiasts would be scarcely capable of proposing such a measure, with any serious hopes, at least, of its ever being adopted.†

Some real advantages, however, a dominant country does derive from a Dependency; though most of them are subject to Mr. Lewis's remark, that 'they depend on the the present system of international relations, and the

* P. 239. † Wealth of Nations, Book IV. ch. vii. Part III.

exclusive and anti-social policy to which independent states have been led by a mistaken view of their own interests.' *

Some Dependencies are military posts. Such are Gibraltar, Malta, the Ionian Islands, and Aden. We occupy them partly for our own convenience, and partly to exclude our rivals.

2. Some dominant countries have drawn a public revenue from their Dependencies. Spain is supposed to obtain now about a million a year from Cuba.

3. A dominant country which prohibits a Dependency from selling in any market but her own may sometimes obtain its productions under their real market value. There was a period at the beginning of this century during which England extorted this advantage from her West Indian colonies. But it excited so much discontent that she was soon forced to surrender it, and to allow them a direct trade with other countries.

4. Where a dominant country possesses rich Dependencies, and great productive powers, she may secure a steady market to her industry by preventing her Dependencies from subjecting her products to prohibitions, or to excessive or differential duties. And it is peculiar to this advantage that it is not obtained at the expense of the Dependency. The Dependency is prevented merely from sacrificing both the immediate and the permanent interests of the whole body of its consumers to the immediate interests of a few of its capitalists and artisans. If the American states had remained British Dependencies they would not have been

* P. 235.

allowed to fetter and misdirect by protective tariffs their own capital and industry, as well as ours. It is true that most dominant countries have abused this power. They have endeavoured to obtain in the market of the Dependency not their natural share, the share which their superiority as manufacturers or as carriers would have given them, but a monopoly. And they have thereby injured both parties; the Dependency, by diminishing its powers both of productive and of unproductive consumption; the dominant country, by checking the growth and wealth of her own customer, the Dependency, and by directing a portion of her own productive forces to objects on which they are employed at a disadvantage. But the liability of a power to abuse by human ignorance, cupidity, and injustice, though it diminishes its advantages, cannot be said to destroy them.

5. A densely-peopled dominant country may sometimes find in a thinly-peopled Dependency a vent for her own surplus population. Such a vent is becoming almost necessary to England. A commercial code, which, by its prohibitions, its preferences, its sliding scales, and its mixture of morality and faction with finance, seems to have been almost a contrivance for rendering the industry of our towns irregular and insecure; and a system of poor-laws, which has created in many country districts a labouring population for whom there is no profitable employment, and then has chained them to their place of settlement, have produced local congestions of people which threaten first to ruin the parishes on which they

feed; and ultimately to disturb the tranquillity on which the prosperity of England, more perhaps than that of any country in the world, depends. For this disease the most immediate palliative is emigration. Our influence over our Dependencies enables us to prevent their creating obstacles, and to obtain from them some direct assistance. And it seems, at first sight, probable that those whose emigration is desirable will be more easily persuaded to it if it do not involve a new allegiance, and the education of their children as aliens.

It appears, however, from experience, that Dependencies are not necessary to emigration, and it seems doubtful whether they materially promote it. No country possesses Dependencies so extensive and so thinly peopled as those of England. No country so systematically encourages emigration to those Dependencies. Yet, of the 93,501 persons who left the British islands in 1845, 58,538 emigrated to the United States, and only 34,963, therefore, to our Dependencies, even supposing them to have absorbed all the remainder. For the twenty years ending with 1844, the aggregate emigration has been at the rate of 62,779 a year, or 1,255,975 in the whole, of whom 569,633, nearly one-half, have gone to the United States.* And yet the British government not merely abstains from promoting emigration to the United States, but endeavours, by every means in its power, by appointing agents, by circulating information, and even by pecuniary

* Colonization Circular, No. 5, Feb. 1845.

assistance, to direct it towards our own Dependencies. There seems no reason for supposing that, if our American and Australian colonies were independent, they would offer less facilities to emigration than they do now.

We are inclined, indeed, to believe, that the class which most profits by the outlet afforded by the British Dependencies, consists not of the poor, but of the rich. Not one poor family in five hundred emigrates, not one in two hundred and fifty ever thinks of doing so. How few are the families among the higher classes who do not look to Asia or America as affording a certain or a probable provision for some of their members? Among the social advantages enjoyed by the British aristocracy there is none which so much excites the envy of foreigners. They complain that, with them, there is little career for educated young men. That the army, vast as it is in most continental states, is overstocked: that the government departments at home, though every expedient is used to create duties, in order to provide for functionaries, are beset by candidates; that trade requires capital, and law and medicine extraordinary talents; and that the result is that half the young men of fair abilities, small means, and good education, who are turned out every year from their schools and universities into the world, find that the world does not want their services. England, they say, provides for such persons in her colonies, or in India.

There is some exaggeration in this statement, but the facts are substantially true. We owe mainly to them our immunity from the indigent well-instructed idlers who fill

the streets of Paris and Berlin, dissatisfied with their position, dissatisfied with the existing order of things, and anxious to try the chances of revolution or war. And we trust that the opportunities now offered to young men possessed of knowledge, energy, and some capital, to employ them in agriculture or commerce in the countries which are now our Dependencies will long continue. For this purpose, however, they need not remain Dependencies. The educated emigrant, indeed, is not so ready to live under a foreign government as the labourer or the artisan, but he can do so. Natives of Great Britain, particularly of the northern portion, swarm in all the commercial marts of the civilised world. But the provision which our Dependencies, as Dependencies, offer, is already diminishing, and must in time almost disappear. That provision consists in the monopoly of the patronage of the subordinate government. Such a monopoly is obviously mischievous to a Dependency possessing native candidates qualified for office. If our Dependencies are ill-governed we shall lose them. If they are well-governed the natives will rise in wealth, knowledge, and importance. They will demand their share in the administration of the country; and in time that share will amount to nearly the whole. This is already the case in Canada; it will soon be the case in all our other American possessions, and ultimately it must take place even in India.

There remains one incident to the relation between a dominant country and a Dependency, which we have reserved until we had considered all its other qualities—

its tendency to a sudden and calamitous termination. All other political relations are capable of indefinite duration or of gradual change. That of a Dependency to a dominant country bears the seeds of a violent dissolution.

We have seen that this relation exposes a Dependency to many grievous evils, and offers to it only one important benefit—protection; and we have seen that, having a complete, though subordinate legislative and administrative organisation, it possesses, at least in appearance, the means of self-government. As soon, therefore, as a dependency thinks itself capable of self-protection, it instinctively attempts to obtain independence. Frequently such an attempt is made by a Dependency which is totally unfit for self-defence or for self-rule; as was the case with Ireland in the last century, and with the Spanish colonies and Lower Canada in the present; and we may be sure that it will never be long delayed after the grounds for making it are sufficient. If the dominant country, to which a Dependency, even when loyal, is generally burdensome, and when dissatisfied is both burdensome and dangerous, would cheerfully, or even reluctantly, consent to separation, the consequences, both immediate and ultimate, would generally be beneficial to both parties—always, indeed, in the case of a distant Dependency to the dominant country, and almost always to the Dependency. But vanity in the mass of the people, and the interest of those who profit by the monopolies, the patronage, and the other abuses of the connection, have

always prevented such an acquiescence. And the result generally is war, the intervention of foreign powers, and ultimately separation, after a contest, which sometimes, as in the case of the Spanish colonies, ruins the Dependency, and sometimes, as in the case of the British colonies, subjects the dominant country to burdens which she never can shake off.

In the rare cases in which the Dependency is so near to the dominant country, as to be capable of direct government, the remedy is incorporation. If this cannot be applied, we almost fear that there is none.

If a Dependency be denied a popular representation, it has no organ to express its wants or its complaints. It has no means of access to the only check on its maladministration—the public opinion of the dominant country. While all is externally calm, abuses, vexations, and insults, the results not of ill-will, but of what is more offensive, of contempt and neglect, render the whole population of the Dependency quietly and silently hostile; until some accident, a provocation of a new kind, or the presence of a foreign force, or some calamity or danger affecting the dominant country, occasions a sudden and general insurrection. If it receive a popular assembly, and that assembly be not allowed substantially to direct the local government—if the principal offices of power, emolument and trust, are not filled by persons selected from its majority—if opposition to the executive, or to the other legislative authorities, be the great business of the body which represents the people—it will probably create

obstacles, which render good government impossible, and constitutional government so difficult, that the dominant country either annuls the representative body, and thus incurs the dangers which we have described as resulting from its absence, or concedes for all internal purposes virtual independence.

If the dominant country make this concession—that is to say, if it allow to the local popular assembly the influence which naturally belongs to it—it creates a relation more permanent, without doubt, than either of the former, but still fated to the same end. It is a relation requiring from each party a degree of good sense and forbearance, which experience does not allow us to expect. The dominant country will see much in the administration of the Dependency which it thinks absurd or mischievous; for it will probably think mischievous or absurd every institution and mode of conduct which differs from its own. It will probably fancy that it is its duty to interfere; and, if it do interfere, it will be resisted.

On the other hand, the Dependency will find fault with the portion of its administration which the dominant country retains. It will not bear that its legislation should be subject to be disallowed, its commerce to be restricted, and its foreign relations to be altogether decided by the imperial government. Having its own government, its own institutions, its own traditions, and its own history, with the strength of a nation, it will acquire the feelings of one. It will admit, perhaps, that it owes allegiance to the sovereign of the country which calls

itself dominant; it will admit that the inhabitants of that country are the fellow-subjects of its own citizens; but it will deny that it owes any allegiance to the supreme government of that country. It will affirm that its own parliament is co-ordinate with the parliament which calls itself imperial. It will affirm, in short, that it is an independent state, connected, indeed, with another state by the accident of a common allegiance—as Hanover was connected with Great Britain, or Scotland, before the Union, with England—but in no respect subordinate to that state. And sooner or later, according to the rapidity of its growth, it will establish its' pretensions. No one can believe that, even if we had abstained from taxing our American colonies, the United States would now have been subject to a subordinate government.

In general, it may be said that one of the chief causes which weakens the power and diminishes the prosperity of a great and enterprising maritime nation, is its liability to be cramped, and weighed down and exhausted, by a parasitical growth of Dependencies. It seems to be the fate of every such nation to waste her resources, first in creating them, afterwards in protecting them, and at last in vain efforts to retain them.

CHAPTER IX.

LEWIS ON AUTHORITY IN MATTERS OF OPINION.*

MR. LEWIS in literature resembles the maker of a special survey in geography. He takes an apparently small province in philology, politics, or philosophy, extends to every part of it a minute investigation, and produces a map always more full, and, generally, more accurate, than could have been obtained if he had chosen a wider field, and consequently a smaller scale. The essays on the use and abuse of political terms—on Irish disturbances, on the Irish in England, and on the government of Dependencies—are instances. None of these subjects had ever before been made the matter of an express treatise: some of them, such as 'The Condition of the Irish in England,' had scarcely been adverted to. In his hands they have all acquired importance. No future writer on any of the matters of which they form parts will disregard them, or will venture to treat them without adverting to the researches and opinions of Mr. Lewis.

There is one great difference, however, between the territorial and the moral surveyor. A man may make a

* From the Edinburgh Review of April 1850.

perfect map of a parish without having ever quitted it. His knowledge or his ignorance of the adjoining parishes or of the county is unimportant. No one can write well on any moral question without having thought much on all the questions that bear on it directly, and on many with which it appears to have little or no connection. The great variety of the matters into which Mr. Lewis, as a philosopher, has enquired, and of those with which, as an administrator and statesman, he has had to deal, contributes materially to the fullness and to the soundness of his special discussions.

Mr. J. S. Mill has remarked, that the least satisfactory parts of a treatise are generally the opening portions, in which the author sketches his subject and defines his principal terms; these being the most abstract parts of his work, and therefore those as to which he is most likely to be accused of confusion or impropriety, and indeed most likely to be guilty of them. The case before us is no exception. We are inclined to object both to the nomenclature and to the classification of the first chapter; and, as the subject is important, we shall state our objections at some length. We will begin by extracting Mr. Lewis's opening sentences:—

> As the ensuing essay relates to matters of opinion, it will be necessary for me at the outset, to explain briefly what portion of the subjects of belief is understood to be included under this appellation, and what is the meaning of the generally received distinction between matters of opinion and matters of fact.
>
> By a matter of fact, I understand anything of which we obtain

a conviction from our internal consciousness, or any individual event or phenomenon which is the object of sensation. It is true that even the simplest sensations involve some judgment. When a witness reports that he saw an object of a certain shape and size, or at a certain distance, he describes something more than a mere impression on his sense of sight; his statement implies a theory and explanation of the bare phenomenon. When, however, this judgment is of so simple a kind as to become wholly unconscious, and the interpretation of the appearances is a matter of general agreement, the object of sensation may, for our present purpose, be considered a fact. A fact, as so defined, must be limited to individual sensible objects, and not extended to general expressions or formulæ descriptive of classes of facts, or sequences of phenomena,—such as, that the blood circulates, the sun attracts the planets, and the like. Propositions of this sort—though descriptive of realities, and therefore, in one sense, of matters of fact —relate to large classes of phenomena which cannot be grasped by a single sensation, which can only be determined by a long series of observations, and are established by a process of intricate reasoning.

Taken in this sense, matters of fact are decided by an appeal to our own consciousness or sensation, or to the testimony, direct or indirect, of the original and precipient witnesses. Doubts, indeed, frequently arise as to the existence of a matter of fact, in consequence of the diversity of the reports made by the original witnesses, or the suspiciousness of their testimony. A matter of fact may, again, be doubtful in consequence of the different constructions which may be put upon admitted facts and appearances in a case of proof by (what is termed) circumstantial evidence. Whenever such doubts exist, they cannot be settled by a direct appeal to testimony, and can be resolved only by reasoning,—instances of which are afforded by the pleadings of lawyers and the disquisitions of historians upon contested facts. When an individual fact is doubted upon reasonable grounds, its existence becomes a matter of opinion.

Matters of opinion, not being disputed questions of fact, are general propositions relating to laws of nature or mind, principles

and rules of human conduct, future probabilities, deductions from hypotheses, and the like, about which a doubt may reasonably exist. All doubtful questions, whether of speculation or practice, are matters of opinion. With regard to these, the ultimate source of our belief is always a process of reasoning.

The essential idea of opinion seems to be, that it is a matter about which doubt can reasonably exist, as to which two persons can, without absurdity, think differently. The existence of an object before the eyes of two persons would not be a matter of opinion, nor would it be a matter of opinion that twice two are four. But when testimony is divided, or uncertain, the existence of a fact may become doubtful, and therefore a matter of opinion. For example, it may be a matter of opinion whether there was a war of Troy, whether Romulus lived, who was the Man in the Iron Mask, who wrote Junius, &c. So the tendency of a law or form of government, or social institution; the probability of a future event; the quality of an action, or the character of an historical personage,—may be a matter of opinion.

Any proposition the contrary of which can be maintained with probability, is a matter of opinion.*

According to the last of these definitions, matter of opinion is opposed, not to matter of fact, but to matter of certainty. But according to an earlier definition, propositions which are established by a process of intricate reasoning—such as the attraction of the planets by the sun—however certain, are excluded from matters of fact, and therefore considered matters of opinion.

We believe that in common use each of these expressions—matter of fact and matter of opinion—is ambiguous.

Sometimes we use the term matter of fact, as it is defined by Mr. Lewis, to mean an event or phenomenon which we know from consciousness of sensation. So used

* Pp. 1–4.

it is opposed to matter of inference. Thus the destructiveness of cholera is a matter of fact. The mode of its propagation a matter of inference. That the sun appears to go round the earth, is a matter of fact. That it is stationary, is a matter of inference. Sometimes, on the other hand, we use the term matter of fact to express, not the sort of evidence on which a proposition rests, but its certainty. In this sense of the word, matter of fact is opposed not to matter of inference, but to matter of doubt. Thus there would be no impropriety in calling the existence of a Deity a fact, though ascertained only by inference. In this sense the immobility of the sun might be called a fact.

A similar ambiguity belongs to the expression, matter of opinion.

Sometimes it denotes the knowledge acquired by inference as opposed to that acquired by perception. Thus we might say that the moon gives light is a matter of fact; that it is uninhabited is matter of opinion. The redness of the blood is a fact; its circulation an opinion. The assassination of Cæsar is a fact; the merit of that act an opinion. Sometimes, and more frequently, it denotes not inference, as opposed to perception, but uncertainty, as opposed to certainty. Thus, the death of Charles I. might be called a fact; his authorship of the 'Icon Basilike' an opinion. Both are matters which might have been ascertained by perception—but we are certain as to the one, and uncertain as to the other.

In this sense, what is matter of fact in one age or in

one place, may cease to be so in another. Among the Greeks it was a matter of fact that the sun goes round the earth: no one doubted it. Among us it is a fact that the earth goes round the sun. Three hundred years ago no one doubted that Cicero wrote the oration *Pro Marcello*. It was therefore a matter of fact. Now the belief that it is spurious rather preponderates. Its authenticity, therefore, is now matter of opinion.

We are inclined to think that the best plan would be to discard from philosophical use both these ambiguous expressions: and to divide knowledge, according to its sources, into matter of perception and matter of inference; and as a cross division, as to our conviction, into matter of certainty and matter of doubt.

Matters of perception are generally matters of certainty. Our senses sometimes deceive us, but it is seldom that we suspect the deception; and as certainty is an attribute, not of the things considered but of the person who considers them, an unreal appearance, if its unreality be unsuspected, is not matter of doubt. Sometimes, indeed, we know that we do not see what we seem to ourselves to see. We know that a juggler does not put our watches into a gun, fire it off, and then return them to us unhurt. Yet it seems to us that we see him do so. So Maclaurin saw a phantom in the corner of his room. He sent for a surgeon, was bled, and, as the blood flowed, the phantom melted away.

Matters of inference, of course, vary from perfect certainty to the slightest suspicion. The inference, from all

past experience, that the sun will rise to-morrow, is a matter of perfect certainty. The inference from the apparent want of water and atmosphere in the moon, that it is uninhabited, is a matter of great doubt. The inference drawn from the analogy of the earth, that the moon is inhabited by rational beings, is too doubtful to be seriously considered.

Mr. Lewis, of course, has a right to select his own nomenclature, provided he employ it consistently. We have seen that his last definition of a matter of opinion is, that it is a proposition the contradictory of which may be maintained with probability. In the rest of this article, therefore, we shall consider him as using the expression 'matter of opinion' in this sense.

We proceed to his definition of authority in matters of opinion:—

> When any one forms an opinion on a question either of speculation or practice without any appropriate process of reasoning really or apparently leading to that conclusion, and without compulsion or inducement of interest, but simply because some other persons, whom he believes to be competent judges on the matter, entertain that opinion, he is said to have formed his opinion upon authority.
>
> Whenever, in the course of this essay, I speak of the Principle of Authority, I shall understand, the principle of adopting the belief of others, on a matter of opinion, without reference to the particular grounds on which that belief may rest.*

In the second chapter Mr. Lewis considers the extent of

* P. 6.

the opinions founded on authority. Of course this genus includes nearly all the opinions of children. It includes nearly all the opinions of the labouring classes. The traditional maxims which they inherit from their parents, the instruction communicated by their clergy, and the desultory information contained in the few books and newspapers which they read, form the basis of their knowledge.

Among the middle and higher orders many will not spare from business or pleasure the time necessary to form independent opinions on matters requiring laborious investigation. Others not only act, but think, under the dominion of fashion, and fear singularity more than error. And even those who are anxious for truth can seek it for themselves in only a few directions.

A mathematician (says Mr. Lewis) takes his historical and political opinions—a moral philosopher or an historian takes his physical opinions—on trust. The difficulty and labour of original thought and investigation are great. The number of subjects is enormous: every year adds to the stock of known facts, both in history and physics. The invention of printing and paper, by multiplying and perpetuating the records of facts and opinions, has rendered it impossible for even a professed student to explore more than certain portions of the field of knowledge.*

It was in the power of Aristotle both to know all that was known by others and to be a great discoverer himself. He was able to illustrate every subject by every other. A modern student has a choice of difficulties. If he concentrate his enquiries, he cannot shed over his own path the

* P. 14.

light which might have been reflected from other portions of the universe of knowledge. And if, in search of this light, he wanders into by-paths, he wears out the strength and the time which are necessary to carry him far in his own peculiar course.

Having shown how large is the extent of the opinions adopted on authority, Mr. Lewis considers what are the marks of trustworthy testimony on matters of fact, and what are the qualifications of a competent guide in questions of speculative truth and practical conduct. This subject has, however, been exhausted by Archbishop Whately,* and is therefore touched on very slightly by Mr. Lewis; and he proceeds to a less-trodden matter—the importance of the agreement in testimony or opinion of the persons whose qualifications give to them authority.

We are inclined to think that he rather overrates the value of the concurrent testimony as to matters of perception, when he says that if ten credible witnesses agree as to a fact, the value of their concurrent testimony is more than ten times the value of the testimony of each. Assuming the matter to be cognisable by the senses, and the observer to be judicious and honest, a single witness is, in most cases, as fully to be believed as ten. We say in most cases, in order to exclude the cases of delusions occasioned by disease. We believe many historical and still more numerous judicial facts, though they are attested by only a single witness. We do *not* believe that a juggler really

* Rhetoric, Part I. ch. 2.

does what he appears to do, though the fact is attested by a whole theatre.

Archbishop Whately has well remarked * that what is called the concurrent testimony of hundreds, is often, in fact, the testimony of one or two persons to what they have seen, or think that they have seen, and that of the rest to their belief in the thing having been seen by others. The whole army of Cortez declared that, at the battle of Otumba, they were led by the apostle St. James. It is obvious that the error or the invention must have been begun by some one person, and that the others were mere repeaters of his story.

The real advantage of plurality of witnesses is, that if they are dishonest they may be detected by separately cross-examining them as to details, as in the *cause célèbre* of Susannah and the Elders. Even this resource sometimes fails, when the witnesses are well drilled. In the Leigh Peerage Case, before the House of Lords, in 1828, the claimant proved his descent from one Roger Leigh, of Haigh, in Lancashire, by a wife whose maiden name was Higham, and he affirmed that Roger Leigh was the son of Christopher Leigh, who was admitted to have been a son of the first Lord Leigh. It was known, however, that Christopher Leigh married one Constance Clent, and that the issue of that marriage had failed. The claimant's case was, that he had previously married a Cotton, and that Roger was the son of the first marriage. To prove this

* Rhetoric, Part I. ch. 2, p. 62, 7th edit.

fifteen or sixteen witnesses swore that they recollected, in Stoneleigh Church, a monument to the Honourable Christopher Leigh, with an inscription which, when put together out of their different recollections, stated that his first wife was a Cotton; that he had by her a son named Roger, who was described as of some place of Lancashire, and who married a Higham. In short, the inscription supplied all the wanting links; and they recollected that, when the church was repaired in 1811, the monument was removed, and never replaced. They supported their evidence by minute details. One witness used to wonder that a Leigh should marry so low a person as a Cotton, since his father had a servant of that name. Another used to be puzzled how the letters Leigh could produce the sound of Lee. Another used to ponder how Higham could be pronounced Hiam. They varied a little as to the colour and form of the monument, but all agreed that it contained the words 'The Honourable Christopher Leigh,' 'Cotton,' 'Roger,' 'Lancashire,' and 'Higham,' and all agreed that it stated Roger to have been the son of Christopher. One witness was accustomed to work in the church, and always put his tools behind this monument. Another had been employed to clean it; another saw it in the vestry, after it was taken down; another assisted a man to copy the inscription, who fell while doing so, and hurt himself; another was churchwarden when the monument was taken down, and remonstrated against its not being put up again; another saw it carried into a cellar in Stoneleigh Abbey, from whence it never emerged. And

yet it was proved, to the satisfaction of all who heard and of all who have read the evidence, that such a monument never did exist, and never could have existed, since all the material statements of the pretended inscription were shown to be unfounded.

Mr. Lewis thus sums up the progress of agreement in matters of inference :—

When any science is in an imperfect but constantly advancing state, the weight of authority increases as the tendency to agreement begins to exhibit itself; as the lines of independent thought converge; as rival opinions coalesce under a common banner; as sects expire; as national schools and modes of thought and expression disappear; as the transmission of erroneous and unverified opinions from one generation to another is interrupted by the recognition of newly-ascertained truths. It is by the gradual diminution of points of difference, and by the gradual increase of points of agreement, among men of science, that they acquire the authority which accredits their opinions, and propagates scientific truths. · In general, it may be said that the authority of the professors of any science is trustworthy, in proportion as the points of agreement among them are numerous and important, and the points of difference few and unimportant.*

These judicious remarks are followed by a passage, which we extract, partly because its general propositions are valuable, and partly because we think ourselves bound to enter a protest against some of the examples by which those general propositions are illustrated.

Assistance in the selection of guides to opinion may be derived from a consideration of the marks of imposture or charlatanism in respect both to science and practice. If such marks can be found, they will afford an additional means of distinguishing mock sciences

* P. 49.

from true ones—the charlatan from the true philosopher or sound practitioner.

In the first place, we may observe that mock sciences are rejected, after a patient examination and study of facts, and not upon a hasty first impression, by the general agreement of competent judges. Such was the case with astrology, magic, and divination of all sorts, at the beginning of the last century; which, having been reduced to a systematic form, and received by the general credulity, have since yielded to the light of reason. The errors of the ancients in natural history, which were repeated by subsequent writers after the revival of letters, have been exploded by a similar process. The same may be said of the influence of the heavenly bodies upon diseases, believed at no distant date by scientific writers. Mesmerism, homœopathy, and phrenology have now been before the world a sufficient time to be fairly and fully examined by competent judges; and as they have not stood the test of impartial scientific investigation, and therefore have not established themselves in professional opinion, they may be safely, on this ground alone, set down under the head of mock sciences; though, as in the case of alchemy, the researches to which they give rise, and the new hypotheses which they promulgate, may assist in promoting genuine science.

True sciences establish themselves, after a time, and acquire a recognised position in all civilised countries. Moreover, they connect themselves with other true sciences; analogies and points of contact between the new truths formerly known are perceived. Such has been the case with geology, which has taken its place as a science founded on accurate and extensive observation only during the present century. But while it has assumed an independent position, it has received great assistance from comparative anatomy and other apparently unconnected sciences, and has thrown light upon them in return.

Pseudo-sciences, on the other hand, are not accredited by the consentient reception of professional judges, but remain in an equivocal and unaccepted state. No analogies or affiliations with genuine sciences are discovered; the new comer continues an alien, unincorporated with the established scientific system; if any con-

nection is attempted to be proved, it is with another spurious science, as in the case of phreno-mesmerism, where one delusion is supported by another. Mock sciences again, not making their way universally, are sometimes confined to a particular nation, or, at all events, to a limited body of sectarians who stand aloof from the professors of the established science.*

We have said that we assent to the general views contained in this passage, but not to all its specific illustrations. We do not think that mesmerism, homœopathy, and phrenology have all failed under the test of impartial scientific investigation. We do not think that this can be fairly asserted of any one of them. There are now probably in England, France, Germany, and the United States, many hundred educated men, who are professedly practitioners of homœopathy. The majority of them were originally trained to believe in the doctrines and pursue the practice of ordinary medicine, or as the homœopathists have denominated it, allopathy. Can there be a doubt that among them there are many who are competent judges, and who have subjected homœopathy to an impartial scientific investigation, and who believe that it has stood the test? They may be wrong in this belief, but they stake on it their own reputations and the health and lives of their patients. Again, the literature on phrenology amounts in bulk to a respectable library. It contains elaborate treatises by men of scientific habits, who had no motives to deceive themselves or the public. We do not affirm that their conclusions are generally acquiesced in;

* P. 50.

but we do affirm that they have not been generally rejected. The truth of the phrenological theory may not have been established, but it has not been proved to be false.

Both homœopathy and phrenology are plausible. They are supported by analogy. The homœopathist affirms that much of what we call disease is in fact a curative process. That the acceleration of the pulse, for instance, in fever, is an effort of nature to escape from a mischievous influence; that it resembles the plunges of a horse who falls under his load, and struggles, as it appears to us wildly, to recover himself. And he asks whether, if we were to consider the horse's struggles as the thing to be remedied, and violently to repress them, we should do good or harm? He affirms that his remedies, though they may exaggerate the symptoms, may by that very process relieve the disease, those symptoms being in fact the mode of cure; and that it is because they assist nature, instead of opposing her, that they are efficient, though exhibited in comparatively minute doses. It is obvious that there are many cases to which this reasoning will not apply, and that the curative process employed by nature may be one that ought to be checked rather than encouraged. Nature, for instance, cures inflammation by suppuration, ulceration, and cicatrisation. She does this blindly: in the lungs as readily as in the other parts of the body; and as ulcerated lungs rarely heal, the patient dies under her practice. Still, however, the homœopathic reasoning is generally plausible; and we are inclined to believe that in many cases its inferences are true.

The basis of the phrenological theory is the hypothesis that, as the brain collectively is the organ of thought and feeling, so portions of the brain are employed in producing specific intellectual and moral results. That as we see with our eyes, hear with our ears, and taste with our palates, so the organs of thought are principally in the front, and those of passion principally in the back of the head; that the portions of the brain which supply combativeness and destructiveness are behind the ears, and those which are used in veneration on the crown. It is possible that even the outline of this doctrine may not be true. It is not only possible, but probable, that there may be error in many of the details of the science as taught by its most accomplished professors; but it appears to us that to affirm its utter fabulousness is more rash than even to maintain its universal truth.

Mesmerism certainly is *not* plausible. That it should be in the power of the mesmeriser, without actual contact, merely by gesticulation and by an exertion of will, to produce in his patient the trance which, in the language of the science, is called somnambulism; that the somnambulist should lose his general perception of the exterior world, should not hear the conversation around him, should not feel pressure from external bodies, should endure, without pain, a surgical operation, but should receive new powers of perception with respect to those with whom he is put into what they call relation, should read their thoughts, see the state of their internal organs, detect in them any disorder, and know instinctively what

are its appropriate remedies,—all these are phenomena for which we are unprepared by any previous experience. They are not, to use a common word in its derivative sense, likely. They do not resemble anything that we have previously known. We ought not to admit them, except on proof more than sufficient to support propositions supported by analogy. But it is impossible to deny that to many men of high moral and scientific character the proofs already adduced have appeared sufficient. Nor is it, we think, to be denied that this number is increasing, and that mesmerism is assuming an importance which must, at no distant time, occasion a formal enquiry, into which its errors, which probably are many, will be separated from, what we may be sure are also many, its truths.

We cannot quit this episode without supporting our views by the authority of a writer whose knowledge and ability none of our readers will undervalue.

In his 'Sequel to the Outlines of Medical Proof,' Dr. Mayo urges with great force the expediency of an enquiry, either by the College of Physicians, or under a government commission, into the merits of homœopathy, hydropathy, and mesmerism. The following is a portion of his argument:—

> The position of mesmerism, with respect to the public, demands not jesting and abuse, but very serious consideration. The reality of those phenomena of trance which have been brought to bear upon the treatment of disease, and the removal of physical pain, is undeniable, however disposed we may be to exercise a chronic

scepticism with respect to certain other transcendental phenomena of the mesmeric state. With respect to mesmeric therapeutics, besides other questions which would spring out of an enquiry, one question would arise of a very practical nature; namely, whether a certain measure of beneficial results being conceded to mesmerism, the extent of benefit is commensurate with the contingent mischievousness of the means employed. Now the public has a right to demand, and to demand of us, some answer to the questions, whether the asserted removal of disorders on mesmeric principles has been truly effected—whether the objections above hinted at to their removal on these principles may be overruled—whether, in regard to this latter point, a line can be drawn between a legitimate and an illegitimate use of the expedients of the science.

For great, indeed, is the curative effect held out by these practitioners, and held out with no slight degree of proof. The talents and high scientific position of Dr. Elliotson are well known. It would be superfluous, and therefore impertinent, to say that his veracity is unimpeachable, but for the unscrupulousness with which charges of insincerity have been brought against professors of mesmerism. Now Dr. Elliotson has recently published a case of cancer, apparently absorbed under mesmeric treatment. Its cancerous nature had been recognised by Mr. Syme, Mr. Samuel Cooper, and Dr. Ashburner, as well as by Dr. Elliotson. But, in fact, the cases of cure, less marvellous in kind than this, of various diseases under mesmeric agency are too numerous to be put aside without enquiry. They are numerous to an extent which will induce the public to accept the *methodus medendi*, with all its presumable evils, unless we place it before them, after investigation in a harmless form, if such a form can be devised, or convict the whole system of vice or imposture.

An enquiry of this kind may no doubt terminate only in incertitude. In this case, if the requisite means have been taken to elicit truth, and to secure ourselves against error, we shall at least have done our duty. But it is conceivable, with respect to homœopathy, that as disease can arise from infinitesimal causes, so infinitesimal remedies may sometimes prove sanative; it is conceivable, with respect to mesmerism, that the influence of the

trance, and of the sympathy, may be admitted by us to possess an extent of medical advantage, which may exceed the disadvantage of the peculiar kind of possession involved in this treatment.*

Dr. Elliotson has all the qualities which Mr. Lewis requires † in an unexceptionable witness to a matter of perception. The facts, so far as they were matters of perception, fell within the range of his senses; he attended to them; he possesses a fair amount of intelligence and memory; and he is free from any sinister or misleading interest. His interest, indeed, would have led him to conceal almost all that he has told; for his connection with mesmerism gave to his reputation a taint of quackery, which for a time materially injured his practice. He has also all the rarer qualities which Mr. Lewis requires in a competent authority in matters of inference ‡—talents, learning, experience, and integrity. If his evidence and his opinions are to be scornfully rejected because he relates phenomena which are not supported by analogical facts, how is the existence of such phenomena to be proved? Are we to adopt the pyrrhonism which maintains that it is more probable that any amount of testimony should be false than that anything differing from what we believe to be the ordinary course of nature should have occurred? On such principles the King of Siam was justified in disbelieving that water can become solid; and the Emperor of China might refuse to be convinced that it is possible to send a message from Pekin to Canton in a second.

* Sequel, pp. 37–40. † P. 21. ‡ P. 27.

Since these remarks were written we have received two papers from Calcutta. One is a 'Report of the Committee appointed by Government to Observe and Report upon Surgical Operations by Dr. J. Esdaile upon Patients under alleged Mesmeric agency;' printed by the government in 1846. The other is a 'Record of Cases treated in the Mesmeric Hospital, from November 1846 to May 1847,' with reports of the official visitors; printed by the Government in 1847.

Some of the diseases prevalent in India require operations longer and more painful than almost any that are endured in Europe. Dr. Esdaile, the superintendent of a hospital near Calcutta, had for some time prepared his patients by throwing them into mesmeric sleep. Lord Dalhousie, anticipating Dr. Mayo's suggestion, appointed a committee (or, as we should call it, a commission), consisting of seven persons, four of whom were medical men, to report on this practice. An apartment in the native hospital of Calcutta was assigned as the scene of the experiment, and ten patients as its subjects.

The committee thus describe the process, and its results:—

The mesmeriser was seated behind the patient, leaning over him, the right hand generally placed on the pit of the stomach, and passes were made with one or both hands along the face, chiefly over the eyes. The mesmeriser breathed frequently and gently over the patient's lips, eyes, and nostrils. Profound silence was observed. These processes were continued for about two hours in each day. In three cases no result was obtained. In seven cases, in a period varying from one to seven sittings, deep

sleep followed. This sleep in its most perfect state differed from ordinary natural sleep as follows:—The individual could not be aroused by loud noises, the pupils were insensible to light, and great, and in some cases apparently perfect, insensibility to pain was witnessed on burning, pinching, and cutting the skin and other sensitive organs. It differed from that which would be produced by narcotic drugs in the quickness with which, in eight cases out of ten, the patient was awoke, after certain transverse passes and fanning by the mesmeriser, and blowing upon the face and on the eyes—in the natural condition of the pupils of the eyes and the conjunctiva in all the cases after awaking—in the absence of stertorous breathing and of subsequent delirium or hallucination; and of many other symptoms familiar to medical observers, which are produced by alcoholic liquors, opium, hemp, and other narcotic drugs. In seven cases surgical operations were performed in the state of sleep above described. In the case of Nilmony Dutt there was not the slightest indication of the operation having been felt by the patient. It consisted in the removal of a tumour. It lasted four minutes. The patient's hands or legs were not held. He did not move or groan, or his countenance change. And when awoke after the operation, he declared he had no recollection of what had occurred. In another case, Hyder Khan, an emaciated man, suffering from mortification of the leg, amputation of the thigh was performed, and no sign of its causing pain was evinced. In a third case, Murali Doss (the operation he underwent being very severe), he moved his body and arms, breathing in gasps, but his countenance underwent little change, and the features expressed no suffering; and on awaking he declared he knew of nothing having been done to him during his sleep. In a fourth case the operation was insignificant. In the three other cases various phenomena were witnessed, which require to be specially pointed out. While the patients did not open their eyes, or utter articulate sounds, or require to be held, there were vague and convulsive movements of the upper limbs, writhing of the body, distortion of the features, giving the face a hideous expression of suppressed agony; the respiration became heaving, with deep sighs. There were, in short, all the signs of intense pain which a dumb person undergoing an operation might

be expected to exhibit, *except resistance to the operator.* But in all these cases, without exception, after the operation was completed, the patients expressed no knowledge or recollection of what had occurred, denied having dreamed, and complained of no pain till their attention was directed to the place where the operation had been performed.*

On receiving this report the Governor-General, 'believing,' in the words of Mr. Halliday, his secretary,

That the possibility of rendering the most serious operations painless had been so far established as to render it incumbent on the government to assist in the enquiry, determined to place Dr. Esdaile for one year in charge of a small experimental hospital in some favourable situation in Calcutta, in order that he might extend his investigations under the inspection of official visitors.

The second paper contains the results of the first six months of this experiment. It appears that during that time a series of operations were performed on patients in mesmeric sleep. Dr. Esdaile states that in seven of the cases in which he operated, the patients recovered consciousness before the end of the operation. In all the others their sleep endured until they were intentionally roused after its termination, and they were then unaware of what had been done to them. In many of them, however, there were indications of pain during its continuance. Three of these last-mentioned cases are detailed by Professor O'Shaughnessy, one of the official visitors. They left on his mind, he says, an unfavourable impression.

But (he continues) I have witnessed so many cases operated upon by Dr. Esdaile, since, without the patients showing the

* Report, pp. 2, 3.

slightest physical or other indication of suffering, either before, during, or immediately after the operation, that I am perfectly satisfied that they did not feel pain any more than the bed they lay upon, or the knife that cut them.*

No one can doubt that phenomena like these deserve to be observed, recorded, and arranged; and whether we call by the name of mesmerism, or by any other name, the science which proposes to do this, is a mere question of nomenclature. Among those who profess this science there may be careless observers, prejudiced recorders, and rash systematisers; their errors and defects may impede the progress of knowledge, but they will not stop it. And we have no doubt that, before the end of this century, the wonders which now perplex almost equally those who accept and those who reject modern mesmerism will be distributed into defined classes, and found subject to ascertained laws; in other words, will become the subjects of a science.

Having described, in the third chapter, the process by which, in scientific matters, an agreement among competent judges, and, consequently, a body of trustworthy authority, is gradually formed, Mr. Lewis proceeds, in the fourth, to consider how far this description applies to matters of religion.

All nations and in all ages have agreed in the belief of the existence of a supernatural power. Nearly all nations, and nearly all ages, have agreed in believing in the

* Report, Appendix, p. 3.

existence of One Supreme God; sometimes believed to be sole, but more frequently supposed to be accompanied by other gods, or by beings, like the mother of God among the Roman Catholics, partially endued with divine attributes. All the civilised nations of the modern world, or, to speak more correctly, all the nations whose agreement on a matter of opinion is of any real weight and authority, agree in believing in some form of Christianity. Nor is there much dispute among Christians as to the moral doctrines of Christianity. Mr. Lewis mentions the degree of affinity within which marriage may be contracted, and the lawfulness of its dissolution, as the only material points of difference. The necessity, for salvation, of some particular opinions, and the lawfulness of persecution, might also, perhaps, be considered as exceptions. It may be said that these last-mentioned views are generally abandoned by Protestants and retained by the Church of Rome. The fact, however, is, that both among Protestants and Roman Catholics these views are retained in formularies of belief and doctrine, but rejected by the enlightened portion of the public. The opinion that misbelievers (miscreants, as our Norman ancestors called them) may be saved is a modern innovation, and so is the opinion that the magistrate ought not (to use the words of our own Liturgy) to maintain truth—that is to say, to repress error by punishment, or, at least, by exclusions and disabilities. The Church of Rome, to which the claim of infallibility is like a coat of mail—a prison as well as a defence—cannot openly repudiate these

doctrines. But the belief in them of its enlightened members is no greater than that of enlightened Protestants.

But though there is a general concurrence throughout the civilised world as to the correctness of the historical outline of Christianity, and as to its moral doctrines, there is no tendency to concurrence as to its metaphysical dogmata, or as to the positive forms by which the ministers of a Christian church ought to be governed and appointed, or, in other words, as to church discipline. Of these questions the former class most affect the imagination; the latter, the judgment. It is only in peculiar states of mind that people take a deep interest in the former; the latter are too practical to be ever disregarded.

When we treat of the relation of the Father to the Son, of the procession of the Holy Spirit, or of the compatibility of Unity and Trinity, we engage in enquiries attractive from their vastness and their obscurity, but without any influence on the actions of man. In considering whether the church ought to be governed by bishops or by presbyters—whether lay nomination, ecclesiastical selection, or popular election be the best mode of appointing ministers—we discuss important political institutions.

But neither the one class of questions nor the other seems to be susceptible of a perfect solution.

Questions of church government, being political questions, are affected by circumstances of time and place. Different forms may be useful in the same society at different periods, and in different societies at the same period. One arrangement may suit a monarchy, another

an aristocracy, and another a democracy. Much may depend on the degree of secular education among the people; much more on their moral habits and on their religious knowledge. No one can believe that the Free Church would work as well in Sicily or in Poland as it does in Scotland or in the United States; or that the private patronage which gives to England a parochial clergy, in many respects excellent, could be tolerated in France.

Such institutions, too, offer only a choice of advantages, and consequently also a choice of evils.

Some peculiar merits and some peculiar inconveniences attach to every arrangement. One system may produce an aristocratic clergy, connected with the higher orders by birth, fortune, and education, bringing into the church larger incomes than they derive from it, liberalised by general literature and foreign travel, influencing the aristocracy because they live with it, influencing the lower classes by their superiority of learning, position, and fortune, and still more by their patronage and charities; the centres, among the rural gentry, of refinement and civilisation, but never mixing familiarly with their inferiors, neither partaking their pleasures nor contributing, by contact, to the improvement of their manners.

Another system may send out a clergy drawn from the lower orders, acquainted with their habits and wants, sympathising with their feelings, living in their society, joining in their amusements, just sufficiently raised above them to inspire respect without awe, and to elevate, by

conversation and example, their moral and intellectual standard; but, at the same time, excluded, by birth, fortune, and manners, from the society of the gentry; never influencing or attempting to influence their opinions or conduct, and treated by them, like the village farrier or the village schoolmaster, as useful and respectable inferiors.

Doctrinal questions, on the other hand, seem unsusceptible of general agreement, not from the abundance but from the want of premises. The arguments by which different sects defend their tenets consist mainly of texts of Scripture, which must be susceptible of various interpretations, since they actually receive various interpretations. With no facts to refer to, and no umpire to interpose his authority, the wrestlers waste whole lives in eventless struggles, neither party having any fulcrum by which he can lift the other.

We may discern (says Mr. Lewis) a certain analogy between the perpetuation of a particular form of Christianity and the perpetuation of a particular language. Both belong to a class of which the forms are various; but each variety, having once arisen, is unchanging, and, when adopted by a nation, remains. Both prevail locally, and are transmitted, by a faithful tradition, from father to son, and both are diffused by colonisation and conquest.*

The practical deduction from these results (he adds) seems to be, that the mere authority of any church or sect cannot, of itself, command assent to its distinctive and peculiar tenets while the present divisions of Christendom continue; and that a person, born in a Christian country, can with propriety adopt only one of two alternatives; viz. either to adhere to the faith of his parents

* P. 73.

and predecessors, and that of the church in which he has been educated; or to form his own judgment as to the choice of his sect by means of the best independent investigation which his understanding and opportunities for study enable him to make.*

There is one circumstance which, in England, impairs authority in matters of religion, to which Mr. Lewis has not adverted. It is the state of English law and English opinion on infidelity.

Christianity, we are told, is parcel of the law of England; and therefore to 'write against Christianity in general,' to use the words of Holt, or 'to impugn the Christian religion generally,' in those of Lord Kenyon, or 'to impeach the established faith, or to endeavour to unsettle the belief of others,' in those of Justice Bayley, is a misdemeanour at common law, and subjects the offender, at the discretion of the court, to fine, imprisonment, and infamous corporal punishment. The statute law is rather less vague. By the 9 & 10 Will. III. cap. 32, whoever, having been educated a Christian, shall by writing, printing, teaching, or advised speaking, deny any one of the persons in the Holy Trinity to be God, or assert that there are more Gods than one, or deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of divine authority, shall, for the first offence, be incapable of holding any office or place of trust, civil or military, and for the second, be imprisoned for three years, and be incapable of suing in any court of law or equity, or of accepting any gift or legacy. The punishment for denying the

* P. 103.

doctrine of the Trinity was repealed in our own times; but the remainder of the statute is in full force at this day. It is true that, in these times, neither the common law nor the statute law is likely to be enforced against a sober, temperate disputant. The publisher of the translation of Strauss has not been punished. But his safety is precarious. If any one were so ill-advised as to prosecute him, he must be convicted of libel, unless the jury should think fit to save him at the expense of perjury; and we doubt whether the court would venture to inflict on him a mere nominal sentence.

But the repression of infidelity by law is far less formidable than that which is exercised by public opinion. The author of a work professedly and deliberately denying the truth of Christianity would become a Pariah in the English world. If he were in a profession he would find his practice fall off; if he turned towards the public service its avenues would be barred. In society he would find himself shunned or scorned—even his children would feel the taint of their descent. To be suspected of holding infidel opinions, though without any attempt at their propagation, even without avowing them, is a great misfortune. It is an imputation which every prudent man carefully avoids.

Under such circumstances, what reliance can an Englishman place on the authority of the writers who profess to have examined into the matter, and to have ascertained the truth? Can he say, 'Their premises and conclusions are before the public. If there were any flaw in them it

would be detected and exposed?' The errors committed or supposed to be committed by writers on the evidences of Christianity may be detected, but there is little chance of their being exposed. It may perhaps be safe sometimes to impugn a false premise, or an unwarranted inference, but never to deny a conclusion. It is dangerous, indeed, to assert on religious matters any views with which the public is not familiar.

There are probably few more strictly orthodox divines than Bishop Hampden. But he ventured to trace to the schoolmen some theological dogmas which prevail in a large portion of the Christian world, and much of the theological terminology which prevails everywhere. Such a novelty raised among his clerical brethren a storm of indignation, which broke through all bounds—not only of sense, or moderation, or reason, but even of law—and induced the University of Oxford to assail him with a *privilegium*, and dignitaries of the Church to push their opposition till they incurred the penalties of a *præmunire*. An individual less firm than Dr. Hampden, or a statesman less resolute than Lord John Russell, would have been carried away by the torrent. To which of its members is the Church—or indeed the country—more indebted than to Archbishop Whately? Who has done so much to explain the doctrines, enforce the precepts, and establish and popularise the evidences of Christianity? But because he ventured to deny that the fourth commandment is still binding, and reminded his logical pupils that the word *persona* means not an individual, but a character, he is

believed by thousands to be 'a dangerous man.' It is to this immunity from criticism that we owe the rash assumption of premises, and the unwarranted inferences with which many theological writings abound. Facts and arguments are passed from author to author, which in secular matters would be dissipated in the blaze of free discussion. Theological literature, at least the portion of it which relates to the doctrines which 'are parcel of the common law,' has been a protected literature; and much of its offspring has the rickety distorted form which belongs to the unhappy bantlings that have been swaddled by production.

To this state of things we owe the undue importance given to the few avowedly infidel books which actually appear. They are like the political libels which creep out in a despotism. Their authors are supposed to be at least sincere, since they peril reputation and fortune. What could have given popularity to 'the Nemesis of Faith' but the persecution of its author? To this also we owe the insidious form in which infidelity is usually insinuated—intermixed with professions of orthodoxy and conveyed by a hint or a sneer. If Gibbon could have ventured, in simple and express terms, to assert his disbelief in Christianity, all his *persiflage* would have been omitted; and the reader, especially the young reader, would have known that his anti-Christian opinions were the attacks of an enemy—not the candid admissions of a friend. To this also we owe much of the scepticism which exists among educated Englishmen; using the word scepticism in its derivative sense—to express not incredulity, but

doubt. They have not the means of making a real independent examination of the evidences of their faith. A single branch of that vast enquiry, if not aided by taking on trust the results handed down by previous enquirers, would occupy all the leisure which can be spared from a business or a profession. All that they think they have time for is to read a few popular treatises. But they know that these treatises have not been subjected to the ordeal of unfettered criticism. As little can they infer the truth of the established doctrine from the apparent acquiescence of those around them. They know that they may be surrounded by unbelieving conformists. And thus they pass their lives in scepticism—in a state of indecision—suspecting that what they have been taught may contain a mixture of truth and error which they are unable to decompose. If a balance could be struck between the infidelity that is prevented, and the infidelity that is occasioned, by the absence of free discussion, we have no doubt that the latter would greatly predominate.

The fifth chapter, 'On the Utility and Proper Province of Authority,' is divided into two portions, of unequal importance. With respect to the first portion—the utility of authority—we have little to say. It contains nothing to which we object, and opens views of little into which we desire to penetrate farther. Perhaps the only point adverted to which we wish Mr. Lewis had treated more fully is the auricular confession of the Church of Rome. He

seems to think that the objections to that practice arise from its abuse or ill-directed exercise by the confessor.

The confessor (he says) may be considered as a vicarious conscience, in like manner as professional advice is vicarious prudence. If the penitent makes a full and true confession, the confessor, or spiritual director, pronounces or advises with a complete knowledge of the circumstances of the case—probably with a knowledge of the penitent's character and position, and always with the impartiality of a judge—free from personal concern in the matter, and unbiassed by passion or interest. Seeing how blind and partial a judge each man is in his own case, and how unconsciously the moral judgment with respect to our own actions is perverted by the inclinations, it cannot be doubted that such a counsellor, in ambiguous cases of conduct—such a *ductor dubitantium*—would be generally beneficial, if the moral code which he administers was well framed, and if his opinion or advice was always honest and enlightened. Unfortunately, however, it happens that the system of moral rules which guides the discretion of the Catholic confessor is founded on a narrow-minded and somewhat superstitious theology, so far as it proceeds upon the distinctive tenets of the Church of Rome; and that the desire of domestic dictation, and of regulating the affairs of families, natural in an unmarried clergy, gives, too often, an improper bias to the influence of the spiritual director.*

Now we believe that, even in the hands of an honest and enlightened confessor, compulsory confession—that is to say, a confession in which the penitent is not allowed to select the matters on which he wishes for advice, but is bound, under the threat of incurring mortal sin, to tell every action, every wish, and every thought—with all its advantages, which are very great—is, on the whole, pro-

* P. 124.

ductive of a largely preponderating amount of evil. The great objection to it is, that it creates a new sin—a sin of which a Protestant cannot be guilty, and a sin to which those whose consciences it will affect most mischievously are peculiarly exposed. We can suppose a person so insensible as to be able, without deep humiliation, to stand in mental nakedness before his priest. But a man with such coarse feelings is not likely to have a sensitive conscience. Gross palpable sins are all that his memory is likely to accuse him of. He confesses them, performs his penance, and obtains absolution; and the only evil is, the fear that the sin which has been so easily wiped out may be repeated—an evil which a resolute and sagacious confessor may generally prevent by aggravating the severity of the penance. But persons, especially females, of shrinking delicacy of thought and feeling, are likely to be both curious in detecting their own mental improprieties and averse to exposing them. Every attendance at the confessional must be a struggle between shame and duty. If duty prevail, we cannot but suspect that it must be at the expense of brushing off the bloom of the mind. We cannot think that every secret thought can be revealed without familiarising the revealer with ideas which might have passed through the brain without a trace, if attention had not been called to them. If shame prevail, a mortal sin is committed under circumstances peculiarly formidable. It is committed deliberately, before the shrine, while the idea of God is present to the sinner's mind; and it is unabsolved.

The feeling of such a sin is likely to drive the timid into religious madness, and to induce the bold to take refuge in infidelity. We know that, in Roman Catholic countries, the necessity of confession is one of the obstacles to a religious life. 'I do not go to church,' we have been told, 'because I do not communicate; and I cannot communicate, because I cannot bear to confess.' According to the Roman Catholic creed, such a state of life is one of mortal sin. Those who indulge in it, therefore, must hope that that creed is false, at least in this respect. It is seldom, however, that a person, bred a Roman Catholic, believes his creed to be only partially erroneous. The Church instantly loses her infallible authority. With that authority fall numerous articles, both of faith and practice, which have no other support. A man with a strong predisposition to religious emotions (in the language of the phrenologists, with a powerful organ of veneration) may stop himself on this inclined plane, catch hold of Scripture, and, like our ancestors, adopt Protestant opinions. But such instances are rare in this sceptical century. In the present state of public feeling, few that abandon Roman Catholicism rest short of deism.

The latter part of this chapter—that which considers the proper province of authority—recurs, in some measure, to the subject of the third chapter,—'The Marks of Trustworthy Authority.' In matters of science and of practical deliberation, the best of such marks is what Mr. Lewis terms the power to predict, but what we rather call the power to

infer the unknown from the known. As we instinctively believe that there is no effect without a cause, and that no cause can exist without producing its appropriate effect, it follows that a being of perfect knowledge can predict all that will happen, and for ever. In some portions of astronomy, and in some portions of chemical and mechanical science, our knowledge is perfect. We can calculate what will be the position of many of the heavenly bodies, at a given minute, twenty years or two hundred years hence. We know what phenomena will be exhibited by the chemical compounds which have been already tried. We can tell in how many minutes a given force will draw a given train from London to Exeter.

Extensive, however (says Mr. Lewis), as our command over nature has become, and wide as is the domain of the useful arts, still every fresh invention, whether mechanical or chemical, is of uncertain success until it has been verified by actual trial and experiment. It is almost as difficult to predict the working of a new machine, as of a new law or social institution. When the problem is simple, calculation can master it; but when the elements are numerous and complex, and when we are not sure that all the influencing circumstances are included, the result is uncertain, and requires verification by experiment in physics as well as politics.*

Mr. Lewis proceeds to consider, separately, two cases with respect to the determination of the future in human affairs: one, when—from a view of all the circumstances which, taken in their aggregate, constitute the actual state of any country—we predict its state at any definite future

* P. 134.

period: the other, when, from the same premises, we predict the effects of some given cause;—the results, for instance, of giving to the peasantry of a semi-barbarous country a right to outdoor relief; or the results of an attack upon Austria by Piedmont. On the approximation to accuracy of predictions in the latter class depend legislation and foreign policy. The instances of failure in both —the cases in which legislation has aggravated the evils which it was intended to remedy, and has introduced others unexperienced before—the cases in which a foreign policy, of which the aim was peace, has produced war—and one which aimed at aggrandisement has ended in ruin—show from their number and their universality that in no age and in no country has the approximation to accuracy been considerable. There are, probably, no great countries in Europe whose foreign policy during the last two hundred years has not produced, even to themselves, much more harm than good; and yet the last two hundred years are the most enlightened period that the world has ever seen. In every country in Europe the principal obstacles to improvement are existing laws. The glory of the Duke of Wellington's administration was the repeal of the laws against Roman Catholics—that of Lord Melbourne's was the repeal of the greater part of the then existing Poor Law—that of Sir Robert Peel's, the repeal of the Corn Laws—that of the present government is the repeal of the Navigation Laws. We wish that Mr. Lewis had given to us one of his comprehensive sketches of the subjects on which statesmen are most likely to err in their internal

and in their external policy. Such a sketch might serve the purpose of the posts marked 'Dangerous,' which the Humane Society erects on the treacherous portions of the ice on the Serpentine. It would say, Avoid these matters, or skim lightly over them. 'Le précipice est sous la glace.'

As a proof of the difficulty of foreseeing the political results of a given act, it has been remarked that scarcely any assassination, or judicial murder, has produced the results contemplated by its perpetrators. The death of Cæsar did not give freedom to Rome—the murder of Becket did not weaken the Papal power in England—the execution of Charles I. merely changed an elderly and imprisoned king into a young and free one—the execution of Louis XVI. did not strengthen the French Republic—that of the Duc d'Enghien did not strengthen Bonaparte—that of Ney did not strengthen Louis XVIII. All these crimes, and almost all similar crimes, have produced results not only different from those which were intended, but opposed to them.

The other class of predictions—those which attempt to infer from the present state of any country what will be its condition at a given period—Mr. Lewis treats with little respect.

Such anticipations (he says), even of the most sagacious judges, can have scarcely better claim to confidence than the predictions of a weather almanack. For example, who, in the year 1788, could have predicted the social and political state of France and a large part of Europe at any period of the Revolution, the Consulate, or the Empire? And even if he had then predicted the

great development of popular and military energy which ensued in France upon the invasion of the French territory, and the attempts to restore the royal authority, his prediction must have been founded on such uncertain and arbitrarily chosen grounds as to deserve little more than the name of a guess. Who, in January 1848, could have predicted the series of events which have occurred on the continent of Europe since that period? and who, if he had happened to conjecture something near the truth, could have ventured to say that his prediction was derived from sure data?*

Mr. Lewis's illustrations cannot perhaps be said to be opposed to his conclusions, but they are not very favourable to them. The two important events which were imminent in 1788 and 1848, were the two great French revolutions. And both were predicted. On December 25, 1753, when no revolution had disturbed Europe for nearly one hundred years, Lord Chesterfield thus wrote to his son:—

Wherever you are, inform yourself minutely of, and attend particularly to, the affairs of France. They grow more serious, and, in my opinion, will grow more and more so every day. The people are poor, consequently discontented; those who have religion are divided in their notions of it, which is saying that they hate one another. The clergy never do forgive; much less will they forgive the parliaments. The parliaments never will forgive them. The army must without doubt take, in their own minds at least, different parts in all these disputes, which, upon occasion, will break out. Armies, though always the supporters and tools of absolute power for the time being, are always the destroyers of it too, by frequently changing the hands in which they think proper to lodge it. The French nation reasons freely, which they never did before, upon matters of religion and government, and begin to be *sprejudicati*; the

* P. 139.

officers do so too: in short, all the symptoms which I have ever met with in history, previous to great changes and revolutions in government, now exist, and daily increase, in France.

In January 1848, to ordinary eyes, the Orleans dynasty appeared to be firmly established. Its chief had spent a long life in constant struggle and constant success. He had able ministers, a strong parliamentary majority, an increasing revenue of above sixty millions sterling, and a well-disciplined army of nearly 400,000 men, of whom 40,000 occupied Paris and the chain of fortresses (impregnable except by long siege) which surround the city. Nearly fifty years had passed since France gave up in disgust her republican experiment, and she was enjoying, under the mild rule of a descendant from her ancient monarchs, an amount of prosperity such as she had never before possessed or could reasonably have expected. Yet, in the midst of this apparent calm, M. de Tocqueville saw the coming storm.

Est-ce que vous ne ressentez pas (said he on January 27, 1848) que le sol tremble de nouveau en Europe? Est-ce que vous ne sentez pas—que dirai-je? un vent de révolution qui est dans l'air? Est-ce que vous avez, à l'heure où nous sommes, la certitude d'un lendemain? Est-ce que vous savez ce qui peut arriver en France d'ici à un an, à un mois, à un jour peut-être? Vous l'ignorez; mais ce que vous savez, c'est que la tempête est à l'horizon, c'est qu'elle marche sur vous.

Certainly the events which followed each of these revolutions could not have been predicted with equal confidence. It might, however, have been foreseen in 1789 that so vain, ambitious, and unscrupulous a people as the

French, when released for the first time in their history from the restraints of regular government, would either provoke an attack from their neighbours, or, as was in fact their conduct towards England, would become the aggressors; that they would be defeated at sea, but would overthrow the selfish, unpopular, and unskillful sovereigns of the continent; and that a few years of war, whether successful or unsuccessful, must drive them to a military dictatorship. It might again have been foreseen, on February 25, 1848, that the fall of royalty in France would shake every throne in Germany and Italy—that constitutions, based on representative assemblies, would be everywhere required, everywhere granted, and everywhere misused—that the Austrian empire, which has so long been undergoing a process of dissolution under the solvent of the Metternich policy, would lose its cohesion—that the complicated, cumbrous, and inartificial machine of the German confederation would, at least for a time, cease to work—that Rome would no longer submit to be administered by priests—and that Sicily would demand the constitution of which she had been defrauded.

All these events might have been predicted on sure data. At the same time, it must be admitted that many of those which followed were not to be foreseen. No one could have expected the people of Schleswig and Holstein to rebel against a good and improving government, and incur the miseries of civil war and revolution, on a question of succession, which does not call for a present decision, and indeed never may require one. No one could have

expected the whole of Germany to sympathise with this wicked folly, and attack an inoffensive and friendly power in order to detach from it two of its most valuable provinces. No one could have expected that a period of weakness and danger, with revolution in her capital and civil and foreign war in her richest territories, would have been selected by Austria as a fit occasion to annul the ancient constitution of Hungary. No one could have supposed that, when this attempt seemed likely to fail, she would have called in the aid of her most formidable enemy, and thrown herself at the feet of Russia. No one could have expected the Romans to drive out the most popular and the most liberal of their popes, or the French Republic to restore an ecclesiastical monarchy. The first invasion of Lombardy by Piedmont surprised no one; but who could have foretold the second? Who could have expected a people and king who, not seven months before, had been saved from destruction only by the magnanimity of their conqueror, to renew the attack whilst their forces were weakened and dispirited, and his were increased in numbers and encouraged by victory? *

* One of the remarkable predictions of distant events is contained in a letter from the Abbé Galiani to Madame d'Epinay, written in 1771. He thus foretells the state of Europe in the nineteenth century:—'Le résultat est que nous ressemblerons beaucoup plus aux Chinois que nous ne leur ressemblerons à présent. Il y aura deux religions très-marquées, celle des grands et des lettrés, et celle du peuple. Il y aura beaucoup de troupes sur pied et presque point de guerre. Le grand souverain de l'Europe sera celui qui possédera la Pologne et la Russie, et qui commandera à la Baltique, et à la Mer Noire. Le reste des princes sera maîtrisé par la politique de ce cabinet prédominant. Il y aura despotisme partout; mais despotisme sans

The great difficulty in predicting the future state of nations arises not so much from their policy depending on volition as from the want of principles from which their volition, in a given case, can be anticipated. In proportion to the virtue and intelligence of a man, we can calculate his future conduct under given circumstances. We know that so far as he is good and wise he will be governed, first by his duty, and next by his interest. If he be intelligent, but immoral, he will pursue only his interest. If he be stupid, but moral, he will endeavour to do what he thinks right, though he may mistake the means or even the object. But if he be neither moral nor intel-

cruauté; sans goutte de sang répandue. Un despotisme de chicane, et fondé toujours sur l'interprétation des vieilles lois, sur la ruse et l'astuce du palais et de la robe. Dans ce temps-là les sciences à la mode seront les physiques. Plus de théologie, plus d'antiquités, plus de langues savantes. Pour la jurisprudence, toutes les nations de l'Europe auront un code particulier, et les lois romaines seront anéanties. On tirera la chicane des sources les plus magnifiques, telles que l'esprit de la constitution de chaque nation et l'ordre essentiel. Les sottes lois favorables à l'exportation et contraires à l'importation détruiront tout commerce; car, lorsque tout le monde veut donner et personne ne veut recevoir, il en arrive que personne ne donne ni ne reçoit plus rien.'[1]

The events of 1848 have impaired the resemblance, but this was not a bad portrait of the continent in its immediately previous state. The difference in religious opinions between the educated and uneducated classes, the large armies employed in doing nothing, the mild despotism directed by lawyers, the substitution of local codes for the Roman law, the preference of physical to theological or classical studies, the sacrifice of commerce to protection, and the political preponderance of Russia, could scarcely have been described in truer language, if the author had been writing from Vienna in 1847.

[1] Correspondance inédite de l'Abbé Galiani, tome premier, pp. 223–225.

ligent—if he have neither virtue enough to select what is right, nor sense enough to know what is profitable—what is to be expected but that he will be governed by the passion or the caprice of the moment? and who can tell what that will be?

Now this is the case of a nation. Any individual who should be guilty of one-half of the follies which have been committed by either France, Prussia, Schleswig, Holstein, Baden, Austria, Lombardy, Venice, Rome, Tuscany, or Naples, during the last two years, would be placed by his friends under restraint, as incapable of managing his own affairs. Any individual who should be guilty of one-half of the crimes of which everyone of these highly-civilised nations has been guilty during the last two years would be hunted out of society. What would Charles Albert or what would any of Charles Albert's counsellors have said if he had been advised to behave to a private individual as Piedmont behaved to Austria? How would Odillon Barrot and Falloux have received a proposal to enter forcibly on the estate of a friend, in order to preserve their legitimate influence with him, and, if he refused to admit them, to break open his house and murder his servants?

The *wickedness* of nations may probably be explained by the weakness of a diffused responsibility, by the absence of a superior capable of punishing wrongdoers, by the frequent success of violence and fraud, and by the consequent absence of any well-regulated public opinion. They are examples of what individuals would be in that

unnatural state which has been called the state of nature, without law and without justice. The *folly* of nations principally arises from their comparative inability to profit by experience. To learn from the experience of others is the privilege of a rare degree of intelligence. But this is what a nation must do, if it is to learn from any long experience: for its own is that of only a few years.

The sixth chapter treats of the number of persons competent to guide opinion on any subject, as compared with the number of the rest of the community. That number Mr. Lewis finds to be very small—consisting, in fact, of the most distinguished members of the small minority who have made the different subjects of speculation and practice matters of especial study. But, though he sets little value on public opinion as a guide to truth, he attaches great importance to it as a guide to conduct. A statesman must humour the feelings, the prejudices, and even the follies of the people. To what extent he must do this, depends not so much on any general principles of human nature, as on national and temporary peculiarities. In Southern India, among a people who have borne taxation up to confiscation without a murmur, the alteration of a turban produced an insurrection. The English of the sixteenth century allowed Henry VIII., Edward VI., Mary, and Elizabeth, to change the national religion from Catholic to semi-Catholic, from semi-Catholic to Protestant, from Protestant to Catholic, and from Catholic to

Protestant. The English of the seventeenth century passed the Test Act, and would not permit even toleration.

There are other subjects (adds Mr. Lewis) in which the taste of the great body of the people establishes a standard, for the guidance of those whose business it is to supply the public with amusement, or by speech or writing to reach their feelings or convictions.

In public speaking, acting, painting—in short, in every art which is addressed to the public at large—popular favour is the criterion of success. The poet, the musician, the architect, the sculptor, is most successful whose work is most admired. Is he then the most excellent? 'No,' says Mr. Lewis: 'true excellence in each art is to be decided by the judgment of persons of exercised taste and observation in that art, not by the opinion of the multitude.'* But if the persons of exercised taste and observation differ in opinion from the public, where are the premises, by means of which the question is to be decided? If works of art, which are produced for the simple purpose of giving pleasure, actually give that pleasure, how can it be proved that they ought not do so? It appears to us that this is a question which can be solved only by posterity.

Est vetus atque bonus centum qui vixerit annos.

A future age may reverse the decision of the many or of the few, or even that of the many and few combined. The euphuists of Queen Elizabeth's days were as universally admired as they would now be derided. Sometimes, though

* P. 187.

rarely, the taste of successive generations oscillates. For about six centuries Gothic architecture was the object of universal and almost exclusive veneration. Its works covered Italy, Spain, France, Germany, and Great Britain. Then followed two centuries, during which it was despised, and some of its finest specimens were supposed to be improved by Grecian additions. Now public favour has returned to it. A somewhat similar fate has befallen the Flemish painters, Hans Hemmling, Van Eyck, and the other masters of that formal, highly-finished, and yet simple school.

There is one art, however, of which, as Mr. Lewis has remarked, the ultimate test is immediate success—and that is oratory, to which may be added acting. All other artists look for the admiration of future ages. They strive to produce something which the world will not willingly let die. The actor can look only to the present. He may, indeed, hope to live for a few years in the memory of those whom he has charmed; but when they are gone, all that remains of powers, which the greatest poets and the greatest orators might have envied, is a name, which tells us no more than the inscriptions on the monuments of Nineveh. What do we really know of Roscius, or Henderson, or Le Kain, or Clairon? To how many is Siddons more than a name, or even the star that has just set, Catalani? If Jenny Lind should execute her cruel purpose of leaving the stage, what will survive fifty years hence of the meteor which passed over Sweden, Germany, and England but the recollections of a few septuagenarians,

and a tradition that the name of Lind once expressed the perfection of acting and of song?

The orator, indeed, may be reported, or may re-write his speeches, and in that form may hope to delight posterity. But what is a written speech? We know that the author of the best written speeches which we possess, probably of the best that ever were written, held that the real merit of an orator consisted, not in his literary, but in his histrionic powers; not in his composition, but in his delivery. We know that his written eloquence, when reproduced by his illustrious rival, with all the histrionic advantages which that great speaker could give to it, was by the confession of Eschines himself merely a faint imitation. When we read a speech we apply it to purposes for which it was not intended. We seek in it instruction and amusement. The orator, if he was a real orator, did not intend to instruct or to amuse. His purpose was to persuade. Wit, imagination, philosophy, every merit of style and composition which did not contribute to this object, he rejected. If repetition, exaggeration, overstrained passion, or any other kind of false taste, was useful, he admitted it. O'Connell knew as well as we do that he talked nonsense about hereditary bondsmen and the finest peasantry in Europe; but while pouring out that nonsense he was one of the greatest, because he was one of the most effective orators, that ever spoke. All that has come to us of Sheridan's celebrated speech on Hastings' trial appears, when we read it in cold blood, tawdry trash; but we know that it was a great speech, not

from the praises that were bestowed on it, but from the effect that it produced.

The seventh and eighth chapters may be considered together. They treat of the application of the principle of authority to political bodies:—

There is (says Mr. Lewis) one subject in which it is necessary that opinions should be counted, and not weighed; that the greater number should prevail over the less, without reference to the intrinsic value of their opinions, and should decide the practical course of action. This subject is civil government, so far as it depends on the decisions of political bodies. In the following remarks I propose to examine the causes of this necessity, and the extent to which its consequences are moderated and counteracted in practice by a voluntary deference to the contrary principle.

In the earliest governments which history presents to us, viz. those of the great empires of Western Asia, everything, from the monarch down to the lowest civil functionary, was organised on the principle of individual action. Being all absolute or despotic monarchies, the principle of a political body was indeed necessarily excluded from the form of their supreme government; the sovereignty always resided in a single person, and not in any council of nobles or popular assembly. No trace of corporate action, no vestige of the existence of any board, or jury-court, or collegium, can be discovered even in any subordinate part of the political system of the purely Oriental States; nor have they, at the present day, advanced beyond this very simple and primitive organisation.

Oriental civilisation has never yet reached the stage which is compatible with discussion concerning common interests by a body of councillors possessing equal rights, each of them entitled to give advice to the rest, and to express an independent opinion. The qualities essential to oral discussion in a numerous assembly are, toleration of contradiction and censure, with such a power of

self-command and suspension of the judgment as enables a person to listen to, and understand, arguments hostile to his own views; to treat them with deference, and to give them a suitable answer. If these qualities do not prevail throughout the assembly, the assertion of adverse opinions, and their comparison and examination, are rendered impossible; the speaker is interrupted by clamour, vociferation, denials, insults, and threats; the entire assembly becomes a scene of turbulence and confusion, and intelligible debate is at an end.*

It is remarkable how well the last sentence describes an animated debate in the late Constituent Assembly of France. In that assembly a speech on any exciting matter was not a continuous discourse. It was a series of short sentences, or attempts at sentences, each of which was interrupted by an explosion of fierce denial or ferocious abuse from one side or from the other. Then followed the reprimands, the complaints, and at last the entreaties of the president, exhorting, threatening, and beseeching for order and silence. Then came, perhaps, a few moments of calm, the screamers being exhausted, and the speaker got out another sentence, which provoked a repetition of the storm. The debate was a sort of trilogy, to which the interrupters contributed the greatest part, the president the next, and the speaker by far the least. The present Assembly is a little more orderly, partly because it was originally rather smaller in number, and partly because June 13 has removed its most vociferous members; but a stranger does not easily believe that it exhibits the collective wisdom, and still less the collective good-breeding, of France.

* P. 191.

Mr. Lewis discovers the first traces of political bodies among the Greeks, from whom they were imitated by the Carthaginians and the Romans. Some centuries later they are found among the Gauls and Germans, either as a native institution, or imported from Italy. On the fall of the Roman empire the Goths and Germans introduced them into every part of Europe; and, though their power was weakened by the despotisms which existed in the greater part of Continental Europe during the sixteenth, seventeenth, and eighteenth centuries, they have recovered their power in the nineteenth, and are now the principal instruments by which civilised nations are governed.

The instant that they were established, it became necessary to ascertain by what means their opinion should be ascertained. There are, of course, only three expedients—to require unanimity, or to let the decision depend on the vote of the majority or of the minority.

Unanimity is usually required at congresses constituted of the delegates from sovereigns. Nations generally, and with great reason, distrust one another too much to consent to be bound by any voice except their own. The consequence is, that congresses seldom produce a result, except where the parties were previously agreed in principle, and meet merely to settle the details. The Congress of Vienna broke up without any decision, and probably would not have been reassembled unless Bonaparte's return from Elba had frightened its members into sudden unanimity. The Congress of Verona met merely to arrange

the means by which a common purpose was to be effected. In the Congress of 1840 France objected to everything, and the four other Powers were forced to settle the Eastern questions without her. The Congress which was proposed to be held in Brussels in 1848 on the affairs of Italy was never complete, and the ministers who attended it separated without a protocol. Mr. Lewis remarks, that the unanimity required from English jurors gives rise to many inconveniences—such as unmeaning compromises, tossing up for verdicts, and forcing concurrence by starvation—but has been found consistent with a regular, if not a very intelligent, administration of justice. Perhaps its most useful result is the necessity which it imposes on the judge of making his charge so clear that not a single juryman shall remain unconvinced. If a mere majority could give him the verdict which he thinks just, he probably would take less pains to demonstrate its propriety than when he can be defeated by the opposition of one individual.

In some political bodies, an unreal appearance of unanimity is obtained by an agreement between the members to carry into effect the decision of the majority, and to conceal their own differences. This is the usual conduct of cabinets in representative governments. Sometimes one or two questions are left open, as too important for compromise. On these the members of the cabinet are at open variance. On all others they profess to agree. It seems at first sight monstrous that men should vote and even speak in favour of measures which they believe to be

mischievous; but it is unavoidable. If all questions were open, and the minority of the cabinet opposed or merely refused to support the majority, few important measures could be carried. All such measures, whatever be their merits, have also their disadvantages. They offer sometimes only a choice of dangers, sometimes only a choice of evils. And yet action—perhaps immediate action—may be necessary. If members of the cabinet which proposes such action were known to be opposed to it, they would often be followed by a majority of the House, and the government would die of paralysis.

On the other hand, this practice weakens the authority of a cabinet minister in debate. The House is never certain that he does not utterly disapprove the resolution which he is urging it to adopt.

> It seems scarcely necessary to prove (continues Mr. Lewis) that, if the decision is not to be unanimous, it must be made by a majority; the hypothesis of the minority of a political body prevailing, by their votes, over the majority, leads to all sorts of practical absurdities.*

There are, however, some circumstances under which this must occur, unless the decision depends upon a bare majority. There are many cases in which the question is, not in what direction we shall advance, but whether we shall advance or remain stationary—whether we shall act or be quiescent. In such cases, if unanimity, or anything more than a bare majority, be required for a decision, and the minority be in favour of quiescence, the minority in

* P. 207.

fact prevails over the majority. It has the power of stopping every proceeding of the aggregate body, and, if it consent to allow it to act, may impose such terms as it thinks fit. This was the secret of Lord Eldon's influence over the cabinets of which he was a member. He was generally opposed to action, always to improvement, and his hostility to any reform was to be mitigated only by exceptions, omissions, and qualifications, which destroyed three-fourths of its efficiency. He was the tribune of the narrow-minded oligarchy, and never was intercession more profusely interposed. One or two bigoted cantons exercised a similar power under the old Swiss Pacte. They conceded only on their own conditions the few acts which they allowed the Diet to pass.

Decision by a majority (continues Mr. Lewis) places all the members of the body upon the same footing, and gives an equal value to the opinion of each. It makes no distinction between them as to competency, but allows the same weight to the vote of the persons most able, and of those least able, to form a correct judgment upon the question to be decided. It therefore proceeds upon a principle directly opposed to the principle adopted voluntarily by those who are not restrained by legal rules: in guiding their practical conduct by the opinions of others, *they* look not to numbers, but to special fitness.

The necessity, however, of having recourse to this principle arises from the nature of political government, and the expediency of a coercive supreme power which it implies. Whenever the ultimate decision is vested in a body, there is, by the supposition, no ulterior authority which can, in case of difference of opinion, determine who are competent judges, and who are not. There is, therefore, no other alternative than to count the numbers, and to abide by the opinion of the majority. The

contrivance may be rude, but it is the least bad which can be devised.

A decision by the majority of a political body is, in some respects, analogous to a battle between the armies of two independent nations. It settles a question which must be settled, and which cannot be settled in any other manner. The one is an appeal to physical force, the other is an appeal to moral force; it is the right of the stronger reduced to a legal expression.*

Mr. Lewis proceeds to consider the means by which this inherent defect in political bodies—the preference of numbers to integrity, talents, and knowledge—may be palliated.

An obvious and common expedient is to give to persons having some quality, which is supposed to be a mark of peculiar fitness, additional votes. The quality generally selected for this purpose is the possession of property. It is the least invidious, since everyone may hope to acquire it—it is the most easily ascertained, and, when owing to inheritance, generally implies superior education—when created, talent, or at least good conduct. In the confederacies of independent states, where the decision of the majority binds, political power is substituted for property. Thus, under the Germanic confederation, the six most important states had each four votes, the five next three votes each, the three next two votes each, and the twenty-four others had a vote apiece.

Another expedient is the voting by, what Mr. Lewis calls, composite units. Thus in Rome, for certain purposes, the people voted by centuries, and the majority of

* P. 210.

centuries prevailed. But power was given to the rich by constituting from them several small centuries, and taken from the poor by throwing them into a few large ones. Under most European constitutions the supreme power resides in what we may, for the present purpose, call three estates, the King or other chief ruler alone forming one. The Queen of England has, theoretically, as much legislative power as the House of Lords or the House of Commons.

Far more effectual than any of these expedients, or indeed than all of them combined, is representation—next to the creation of political bodies the greatest step that has ever been made in the art of government. The experience of many thousand years has shown that the action of the democratic element is necessary to the existence of even the very defective amount of good government which any portion of the world has as yet enjoyed. Pure monarchies, and pure aristocracies, and the mixture of the two, have always sacrificed the interests of the many, where they appeared opposed to those of the one or of the few, and have generally misunderstood them when they wished really to promote them. But until representation was invented, it was impossible to apply democracy either to a large country or to a large population.

The inhabitants of the island of Elba are perhaps not too numerous to manage their own affairs directly; but small as the island appears, probably not one-tenth of the people would be able to attend habitually any place of public council.

No part of Paris is distant an hour's walk from the centre, but the number of its inhabitants is too large for direct political action. The result of the attempt in 1848 was the extemporisation of a republic by a few thousand ruffians, to the astonishment of the mass of the people and to the shame and consternation of the educated classes.

Representation has solved this difficulty. By its aid the largest territory and the densest population may be governed democratically as effectually as a village. This was probably the only purpose for which representation was originally introduced. A further incidental advantage is, that the representative is generally superior in education to the mass of his electors. There is a tendency, indeed, in popular constituencies, to select persons belonging to the highest aristocracy, partly because they are more generally known, and partly because the pretensions of a superior excite less jealousy than those of an equal. Many contrivances have been adopted for the purpose of increasing the chances of a good selection. Neither voting by composite units, nor the giving to an individual additional votes proportioned to his property (familiar as they are in the choice of officers), have been applied to the choice of representatives; but in most representative governments the possession of a certain amount of a certain kind of property has been required as a qualification for the elector and also for the elected. Women and children, and unnaturalised foreigners, are universally excluded. So are generally persons receiving public as-

sistance, persons in the immediate employ of the government, and sometimes persons not professing the religion of the state. These and similar exclusions constitute the genus of representative governments, to which the name of *exclusive* may be given.

Mr. Lewis has not, we think, paid sufficient attention to this genus. He appears to treat an exclusive government as an aristocracy; but it seems clear that a government may be at the same time very exclusive and yet very democratic. Athens, under Pericles, was a democracy, though nine-tenths of the Athenians were excluded from the government. France, under Louis Philippe, was more democratic than England, though the French voters were not one in a hundred, and the English voters were about one in twelve.

Another plan is indirect election. This is merely carrying the elective principle one stage farther. As the qualities which fit a man to be an elector are less rare, and are more easily ascertained than those which fit him to be a legislator, it is more likely that the people at large will select good electors than good representatives. It has the further advantage, that it is the least dangerous mode in which the principle of exclusion can be altogether got rid of, or, in other words, in which universal suffrage may be granted. And this is no slight advantage. Exclusive governments are forced to adopt arbitrary lines of demarcation. There is no substantial reason for giving a vote to a householder and not to a fundholder; or to the occupier of a house worth 10*l.* and not to the occupier of one worth

only 9*l.* 19*s.* The excluded, and therefore dissatisfied majority, are always a cause of weakness.

To these correctives of the pure numerical principle must be added the influence of leaders among the electors, and that of political connections, and of heads of parties, in the representative body.

It follows (concludes Mr. Lewis) from what has been said in this and the preceding chapter, that popular government, as now understood and carried into effect, for large territories, by means of the representative system, is to a great extent founded, legally and theoretically, upon the numerical principle; but that, morally and in practice, the working of this principle is modified, counteracted, and crossed in various directions, by the influence of the antagonist principle of special fitness. In arranging the terms of this compromise, and in adapting them to a given community, lies the secret of a free constitution.

A compromise of this kind (as we have already had occasion to remark in reference to the subject of decision by a majority) necessarily implies a junction and an amalgamation of opposite principles. It supposes that sufficient weight will be given to the numerical principle for interesting the bulk of the community in the existing order of things, and attaching them to the government; while such an admixture of the principle of special fitness will be secured as will prevent the government from falling into the hands of persons who, from their ignorance, inexperience, or want of judgment, are incapable of properly directing its course.*

On one of the most important questions connected with representation we are sorry not to have Mr. Lewis's opinion. It is this. The number of representatives and of constituents being given, what are the advantages and

* P. 278.

inconveniences of comparatively large and small constituencies, and consequently of numerous, or few, or even individual representatives? There being, for instance, within a given district, 400,000 constituents, who are to return twenty representatives, what would be the effect of throwing them into one, or perhaps two constituencies, each man voting in the former case for twenty, and in the latter case for ten, representatives, as compared with the effects of dividing them into twenty constituencies, each returning a single member, or into ten, each returning two members?

The latter is the English system. The city of London is the only constituency which returns more than two members, and several return only one. The other is the modern French system. Each of the eighty-four departments returns a portion of the 750 representatives proportioned to its population—the smallest number being three, and the largest twenty-eight.

The most obvious tendency of the French, or collective, or, as it is called in America, the ticket, system, is towards the disfranchisement of all but the members of a single party. If France were one constituency for the election of representatives, as it is for the election of a president, and each elector had to vote for 750 representatives, it is probable that a single list would prevail, almost without alteration. We will suppose the country divided into Legitimists, Orléanists, Bonapartists, and Republicans, in the following proportions:—four-thirteenths Republicans, and three-thirteenths belonging to each of the other de-

nominations. Under such circumstances the Republican party, though scarcely exceeding one-fourth of the whole population, would return nearly the whole Assembly. If there were only two parties, about equally balanced in numbers, mere accident would decide which should be not merely omnipotent, but unopposed, and which should be not only excluded from power, but unrepresented. If such be the effect of the collective system when fully carried out, such must be its tendency when partially adopted. And it must be admitted to be most mischievous both to the successful and to the unsuccessful party; impelling one to acts of insolent oppression, and driving the other towards disaffection and revolution.

The other extreme—that of subdividing the voters so as to give a separate constituency to each representative, has a tendency, though in a much slighter degree, to produce a similar effect. In each constituency one party only is represented, though the frequent agglomeration of persons of the same political opinions in particular districts would probably ensure, if the districts were small, a representation of the minority. The plan, however, which effects this most effectually, often, indeed, to excess, is that which, with the single exception of the city of London, was adopted by our ancestors—the giving two members to each constituency. The natural result is a compromise—the return of one member by each party. If there were two constituencies of 1,025 voters each, 525 in each being Tories, and 500 Whigs, and each returning a single member, it follows that two Tories would be returned. If they

were thrown together, and had to return two members, it is probable that the result would be, one Tory and one Whig. The 1,050 Tories would not attempt to carry two members against the 1,000 Whigs. Perhaps the arrangement which best reconciles the two important purposes of giving preponderance to the will of the majority, and of securing a fair hearing to the minority, is to give to each constituent body three members. The majority must always return two. The minority, unless it were very weak or very negligent, could seldom be prevented from carrying one.

On the other hand, the collective system is comparatively favourable both to the selection of fit representatives and to their good conduct when selected. A small constituency is open to bribery, and is exposed to intimidation; where these are not used, its favour is gained by treating, by canvassing, by flattering its prejudices and perhaps its evil passions, its national animosities, its envy or its intolerance, or by pledges which it may be infamous to break and wicked to keep. Its favour is retained by local expenditure, by jobbing, by sacrificing to its petty jealousies and temporary convenience, or to its commercial or manufacturing or agricultural monoplies the large and permanent interests of the community; by yielding to its narrow-minded fancies and gratifying its ignorant antipathies. From these evil influences a collective constituency is free. No one can purchase or frighten, or even canvass a whole department. The leading men of each party make out their lists. They decide for their respective followers

who among the candidates of their own opinion shall be supported. They do not select provincial magnates or local demagogues, the stars of a country town, but men of metropolitan reputation. The representative is independent of his constituents. He has not purchased them by promises, and need not sell them for places. While the great public of the people approve his conduct, he may despise local unpopularity. If he become a distinguished member of the Assembly, he is sure at the next election to be put upon twenty different lists; he can afford, therefore, to act honestly, without being degraded by the fear which always disturbs the imagination and distorts the policy of an English statesman—the fear of losing his seat.

We cannot quit this portion of the work without considering a subject slightly alluded to by Mr. Lewis in the seventh chapter—the propriety of admitting into legislation and administration a system of compromise and fiction—a system, according to which, sometimes a principle acknowledged, and partially acted on, is not fully carried out; sometimes two inconsistent principles are each avowed, and each from time to time obeyed; and sometimes a theoretic rule of conduct is laid down, and in practice is violated systematically. The extent to which this system prevails in England is almost ludicrous.

Thus, in theory, the English sovereign is a substantial power. He selects and dismisses his ministers, his pleasure is taken on all appointments, he gives or refuses validity to all legislation. In practice the Crown is a phantom, accepting the ministers tendered to it by the

Commons, retaining them while they retain the confidence of that House, placing at their disposal all its patronage, and assenting to every bill which the two Houses have agreed on. The English consider, and with reason, the publication of the debates in the House of Commons one of their most important usages. There are few single causes to which so much good, and we must add, so much evil, is to be attributed. But this practice, which influences sometimes mischievously and sometimes beneficially the whole course of our government, is not merely unprotected by law—it is positively illegal. It is a contempt of the House of Commons; and, from time to time, some Irish member summons to the bar the printer and publisher of a newspaper, and threatens them with imprisonment, ostensibly for reporting, really for not reporting the complainant in the dimensions which his senatorial rank requires. Even the presence of auditors is a violation of the standing orders of the House. The debates which, in hundreds of thousands of reports fly through the whole civilised world, are, in theory, secret. Nor is the standing order, like some others, invoked only to be dispensed with. It is enforced not on the motion, but merely at the suggestion of a single member, without an appeal, without even a discussion.

The whole jurisdiction of our courts of equity is one gigantic compromise. The English common law judges—perhaps the least intelligent makers, and the most perverse interpreters of law, that the world has ever seen—laid down and adhered to certain rules respecting property and

contracts, against which common sense revolted. The clerical chancellors resolved to get rid of them. They could not control the common law courts. But they forbade all persons to have recourse to them for these purposes.

The law (said the Chancellor) which gives to the mortgagee the mortgaged property if the mortgagor does not repay the principal on the appointed day, is unjust. We cannot prevent the courts of law from adhering to their rule, but woe be to the suitor who accepts their assistance. He is guilty of a contempt of the Court of Chancery, and shall be imprisoned until he makes restitution.

So, again, if a man, forced to take part in a civil war, entrusted his property to a friend, in less danger of forfeiture or confiscation than himself, the courts of law said—the property has been given to the trustee, it is his, and he shall keep it. The Court of Chancery said—it is not his, he shall not keep it, and though we have not the means of taking bodily possession of it, and handing it over to the true owner, we will imprison the trustee until he gives it up. One of the strangest parts of this strange system is that the courts of law acquiesce in it. They acknowledge the monstrous injustice of their own rules, but say that they do no harm, since the courts of equity supply a remedy. And thus a state of things has grown up unintelligible to any but the lawyers of England, and of the nations that have borrowed their institutions from England, under which nearly all the property of the country has two different owners, often two different sets of owners; one having a clear indisputable title at law, and therefore called the legal owner, the other having a clear indis-

putable title in equity, and therefore called the equitable owner.

But though this spirit of compromise and fiction is carried by us to excess, we admit, with Mr. Lewis, that within limits (which, however, are not capable of being predefined), it is valuable—that it may often be useful—

To establish a principle on account of certain effects which it produces, and as far as regards these effects, to allow an unimpeded course to their action; but, with respect to other effects, which would, if permitted to arise without restraint be productive of mischief, to try to neutralise and impede them by adverse and repressing influences.*

The ninth chapter, on the propagation of sound opinions by the creation of a trustworthy authority, is one of the most important in the work; but we are so near our limits that we can consider only a small portion of it —that which enquires whether it is the duty of a government to diffuse and encourage religious truth and to repress and discourage religious error. Mr. Lewis begins by laying down, in bold and unqualified terms, that the only criterion for trying the duty of the state to interfere in any matter, is the expediency of the interference.

If the interference (he says) is likely to be attended with advantage to the community, if the end to which it is directed be good, and it be likely to promote that end, then the duty of the state is to interfere.

The question as to the duty of the state with respect to the encouragement of truth, and the discouragement of error, must be decided on these grounds. Everybody admits that (provided

* P. 236.

his own standard of judgment be adopted) it is right and fitting to encourage truth and discourage error. About the desirableness of the end there is an universal agreement; that the promotion of this end lies, theoretically and legally, within the province of the state, and that a government possesses powers which can be directed towards this object, are certain. It follows that, if the attempt is likely to be attended with success, and to be, on the whole, advantageous to the community, it ought to be made; but that if the attempt is likely to fail, and the cause of truth is not likely to be promoted by it, the state ought not to interfere.*

There is no doubt that religious error is one of the causes which have most interrupted the advance of civilisation. It seems to arrest a nation at some point of its progress, and to prevent, or at least materially to retard, its further improvement. Even one of the least oppressive of superstitions—that of the Greeks and Romans—though it permitted great intellectual development, so perverted the moral feelings of the two races, that, in both the one and the other, the period of splendour was soon followed by one of irrecoverable decline, until each fell before invaders inferior in knowledge and refinement, but superior in the virtues which enable countries to retain their independence. The nations which have professed Buddhism, Hindooism, Mahometanism, and the creeds which govern China and Japan, have all, sooner or later, reached a point at which they have been stationary for ages. The only religion which admits of unlimited improvement is Christianity, and the forms of it which we believe to be least infected by error are the most favour-

* P. 288.

able to the diffusion of real civilisation. The only great Roman Catholic population in Europe which can be compared to the Protestant populations is that of France; and it is to be observed that the really Roman Catholic portion of the French, the peasantry, are far less civilised than the Protestant peasantry of Germany, Holland, and England. The dirt, untidiness, and general discomfort of a French village are intolerable to anyone who enters France from a Protestant country.

Such being the mischievous tendencies of religious error, is it in the power of the state to prevent its introduction, or to extirpate it when introduced?

Mr. Lewis thinks that it is.

> That the system (he says) of enforcing religious truth by punishment—the system which its enemies call religious persecution—has been to a great extent successful, cannot be disputed. It is impossible to doubt that, in the sixteenth and seventeenth centuries, the Protestant or Reformed faith was greatly checked by the temporal power of the Catholic governments. It was checked in two ways—by preventing its entrance into a country (as in Italy and Spain), and by expelling it from countries in which it had taken root (as in Southern Germany, France, and Flanders). The transportation of the Moriscoes from Spain, the expulsion of the Jews from several countries, and the destruction of the Christians in Japan, afford other examples of the success of forcible measures for the extirpation of a creed which the government deemed erroneous.*

He decides, however, for the following reasons, against the expediency of persecution. First, because religious

* P. 292.

error cannot be totally suppressed by severity, since what one nation regards as error another regards as truth. Secondly, because even those who do not share the opinions of a martyr, respect his sincerity; because 'there is a sympathy with his sufferings and a consciousness that the state, instead of gaining his conviction by the legitimate weapons of persuasion and reason, has, being the stronger, used its strength for causing its own opinion to prevail.'

We confess that this reasoning does not appear to us conclusive. It is true that no common effort will ever be made by the European governments to put down or set up any one form of Christianity, and consequently that religious error cannot be driven out of Europe. But if it be admitted that it is in the power of persecution to introduce and to extirpate peculiar doctrines in a given country, the impossibility of doing this universally is not an argument against doing it partially. If precautions against cholera are found to be effectual, the refusal of our neighbours to take them is no reason for refusing to take them ourselves. Nor is the sympathy of the public for religious offenders a ground for leaving them unpunished. The public often sympathises with political offenders—yet we punish rebels and traitors. Nine-tenths of the people of Ireland sympathise with Smith O'Brien and Meagher—but we do not recall them from transportation. Nor is it true that 'only true opinions in religion can in the long run be propagated by reason, and by that voluntary deference to authority which implies reason.' Archbishop Whately has shown that most of what we call

the errors of Romanism are opinions natural to the human mind; and we know that many of them grew up and established themselves by means of reason, or of what was called reason, and of authority, long before the state interfered to propagate or to protect them. The fact seems to be that religious truth and religious error can both be propagated by argument and authority, and can both be suppressed by persecution and force.

If, then, religious truth be favourable, and religious error unfavourable to the welfare of a people—if it be in the power of the state, by means of persecution, to diffuse the former, and to extirpate, or at least to discourage, the latter—and if it be the duty of the state to do all that it can do to promote the welfare of its subjects, on what grounds ought it to abstain from persecution?

The able author of the 'Letters on the Church' admits that he can find no arguments against persecution which ought to convince a Mahometan or a Pagan ruler.

> But (he adds) those who profess the Christian religion, and seek to support their faith by the secular arm, I would rebuke in the words of their Master, saying, 'Ye know not what manner of spirit ye are of.' I would urge that Christ himself has expressly renounced all secular authority, and *forbidden* all coercion in the cause of his religion, both by his declaration that his 'kingdom is not of this world' (which would manifestly be false, if he authorised the employment of force in his cause), and by the whole tenour of the religion he founded, by everything said or done by himself and his apostles, that could in the most decided manner confirm and illustrate that declaration. And I would point out that the passages of the Old Testament which have been erroneously adduced in opposition to this doctrine afford,

in truth, a strong confirmation of it, by the relation they manifestly bear to a totally different system; to a kingdom which *was* of this world, having Jehovah for its supreme magistrate, administering his government by temporal sanctions. And I would conclude, without fear of refutation, that he who calls in the civil sword to the aid of Christianity is dishonouring and betraying, instead of serving the cause of a *suffering* Messiah, who, when those his sufferings were deprecated by his zealous but erring disciple, solemnly reproved his mistake, saying, 'Thou savourest not of the things that be of God, but *those that be of men*;' and who commanded that same disciple to 'put up his sword into its sheath.' *

This argument, however, affects only those Christians who believe that the spirit of Christianity is opposed to religious persecution. And they are, as we have already stated, a small and a recent minority. We believe that the duty of abstaining from the forcible propagation of religious truth may be maintained by an argument of universal application—one to which a Mahometan or a Pagan must yield, as well as a Roman Catholic or a Protestant. It consists in the impossibility, in almost all cases, in demonstrating that what is persecuted is really error. We have already remarked that most of the disputes which separate Christian sects relate, not to practical morality, but either to questions respecting Church discipline and government, which may receive different answers among different nations and at different times; or to questions as to the nature and attributes of the Deity, and as to his dealings with mankind, which depend on the

* Letters on the Church by an Episcopalian, p. 31.

interpretation given to certain portions of Scripture as to which men have been differing for eighteen centuries, with a tendency rather to further divergence than to agreement.

The Trinitarians think that the eternal co-existence of God the Father and God the Son is the scriptural doctrine. The Arians think that the Begetter must have existed before the Begotten. The Latin Church believes that the Holy Spirit proceeds from the Father and the Son. The Greek Church believes that the Holy Spirit proceeds only from the Father. Each of these opinions has been supported by hundreds of learned, conscientious, and diligent inquirers. Each has been adopted by millions of enthusiastic votaries; each has been propagated by violence, and resisted by endurance; each has had its doctors, its persecutors, and its martyrs.

Among the errors which Protestants impute to Roman Catholics there is one which appears capable of demonstration; for it seems to involve a logical absurdity—the notion that a thing can retain all its attributes and yet be changed in substance. Yet this apparent absurdity is sanctioned by an enormous preponderance of authority. For centuries it was undisputed. Even since it has been called in question, more than three-fourths of the Christian world adhere to it.

It is possible that many of the opinions for which we persecute one another relate to matters which our faculties are unable to comprehend. It is possible that if our controversies could be submitted to the decision of beings of higher knowledge and intelligence than those of man,

they would tell us that for the most part we are disputing about words which signify no realities, and debating propositions which, being unmeaning, possess neither truth nor falsehood.

The fact, then, on which the expediency of persecution depends—the falsehood of the persecuted doctrine—being in general incapable of demonstration, it follows as a general rule that persecution is not expedient. We say in general, for there are some religious opinions so obviously mischievous, that the magistrate may be bound to put them down. Such are the doctrines once attributed to the Church of Rome, that faith is not to be kept with heretics, that the Pope may release subjects from their allegiance, and that indulgences may be purchased for the darkest crimes. And with respect even to such doctrines as these, all that the state ought to prevent is their active dissemination. The mere holding them, being involuntary, is not a fit subject for legislation.

The argument against persecution, of which we have just given an outline, is, however, seldom employed. It may be worth our while to enquire why this is so; why, among the thousands who have argued against persecution, scarcely any have made use of a train of reasoning which appears to us to be obvious and conclusive.

We believe that the explanation is to be found in the peculiar state of mind with which men approach religious questions.

On all other questions they are anxious, or, at least, profess to be anxious, to keep themselves in what may be

called a state of intellectual candour. They affirm that they are open to argument, and that they wish to hear what is to be said on both sides.* Even in matters in which each step is a matter of certainty, they distrust their own judgment as soon as their conclusions are questioned by a competent authority. A man who has added up a column of figures doubts the accuracy of the operation, if an accountant has examined it and tells him that he has committed an error.

On religious questions this state of mind is avoided by most men and disclaimed by all. On such subjects most men try to feel, and all profess to feel, perfect certainty. They do not pretend to be open to reason; they do not wish to hear what is to be said against their opinion; they are afraid of unsettling their faith. They are not startled when they are told that views different from their own are taken by men whose talents, integrity, and diligence render them competent judges. A Protestant cares nothing for the authority of Bossuet or Pascal, or a Tractarian for that of Whately or Hampden. Every man clings to his faith, as if it were unassailable, yet screens it from opposition as if the first hostile breath would overthrow it.

* In entering upon any scientific pursuit, one of the student's first endeavours ought to be to strengthen himself by something of an effort and a resolve for the unprejudiced admission of any conclusion which shall appear to be supported by observation and argument, even if it should prove adverse to notions he may have previously formed or taken up on the credit of others. Such an effort is the first approach towards mental purity. It is the 'euphrasy and rue' with which we must purge our sight before we can receive and contemplate as they are the lineaments of truth.—Sir John Herschel's *Astronomy*; Introduction.

The source of these feelings is the opinion—first held by the Jews, and adopted from them by both Christians and Mahometans—that religious error not merely leads to sinful practice, but is in itself actually a sin; and it is remarkable that the errors which are generally supposed to be most sinful are not those which predispose to conduct hurtful to ourselves or to others—such as the belief that the favour of God is to be obtained by self-torment, or by persecuting those whom we assume to be his enemies—but mere speculative doctrines, which have no influence on human actions. The Athanasian Creed requires whosoever will be saved, not to love God and his neighbour, but 'to think rightly of the Trinity.' Men who believe that all who do not keep holy and undefiled this very technical faith without doubt shall perish everlastingly, must tremble at every doubt that intrudes itself. Those whose confidence in their own opinions is perfect rejoice in the firmness of their belief; those who are assailed by doubts endeavour to suppress them, and to assume a conviction which they do not feel; and thus the members of every sect agree to treat as a matter of perfect certainty the points of its peculiar faith. Every writer and speaker, therefore, who has to consider the propriety of enforcing his faith by persecution begins by affirming or implying—if he be a Roman Catholic, that the Protestant doctrines, if he be a Protestant, that the Roman Catholic doctrines, are certainly false; and he then finds it difficult to show why falsehood should not be suppressed.

The title of the tenth chapter—on the abuses of the principle of authority—is perhaps almost a misnomer, for the principal subject is not the abuse, but the use of authority. The abuses of authority, indeed, are obvious; and, up to a certain point, they have a tendency to increase as a nation advances in knowledge and civilisation. Among barbarians the subjects of thought are few. A savage takes his religion on trust, but almost all his other opinions are the result of his experience; and therefore among savages the oldest man is generally the wisest. In an advanced state of civilisation, the amount of knowledge may be said to be practically infinite; since it is far greater than could be acquired in the longest life, or received into the most capacious intellect. The mass of the people have not sufficient general knowledge, or sufficient leisure to enable them to test the truth of one-thousandth part of the propositions which come before them every day; and they acquire the habit of torpidly acquiescing in what they hear or read, provided their informant be one whom they are accustomed to trust. Those who mix with the English labouring classes, particularly with those who are supposed to be the most intelligent—the manufacturers—are at first astonished by the slavishness with which they adopt the views and obey the orders of those to whom they look up as leaders. Whole bodies of workpeople abandon their employment—expose themselves, their wives and children, to distress, hunger, and disease, which may never be shaken off—combine to ruin the master who has been their benefactor for years—insult, maltreat, and perhaps assassinate

their own associates, who do not join in the strike—and all this, at the dictation of persons whose names are often concealed from them; but whose anonymous orders carry the authority of the committee of the union. During the comparatively tranquil intervals between strike and strike they suffer from their self-constituted rulers an amount of interference, of taxation, and of capricious oppression which would produce a rebellion in Russia or Turkey. Under the influence of this despotism they have seen the manufactures of great towns, as in the case of Dublin, indeed of great countries, as in the case of Ireland, gradually perish or withdraw. The reasonings which are addressed to them by their superiors, the calamities which they witness among their equals, even those which they have endured and are enduring themselves, have no weight when opposed by the authority of their own delegates and committeemen.

We will pass to a still more striking example. The wretchedness of Ireland is generally attributed to the misgovernment of England; and this is certainly the ultimate, but not the immediate cause. From the Union—that is to say, during all the time that is recollected by the present generation—Ireland has enjoyed a pure administration of justice, local self-government, free institutions, and the lightest taxation in Europe. England has wasted and is wasting her treasures in her defence, in the support and education of her people, and in unrepaid loans for her improvement. She has been the spoilt child of the empire. But the insolent injustice with which we have

treated, and continue to treat her religion, has led the bulk of the people to withdraw their confidence from the government, and from all connected with the government, and to trust blindly to their own priests and demagogues. Under such influence they have been engaged in a chronic conspiracy against the law and its administrators. Neither persons nor property have been safe. Agrarian outrage has rendered agricultural improvement impossible; the atrocities committed by the trades' unions have driven away manufactures; capital, credit, and commerce have disappeared. The landlord has emigrated and been replaced by the agent; the manufacturer has established himself in a safer country; the merchant has followed his customers. Blindly obeying the orders of those whom they have put in authority over them, this unhappy people has wasted in agitation and outrage the energy which might have made Clare and Tipperary as prosperous as Down or Antrim.

When we see such consequences flow from obedience to ill-chosen guides in our own islands—when we see the misery which within the last two years the people of Italy, Germany, and France have been induced by a few thousand ruffians and fanatics to inflict and to suffer—we are inclined to prefer the ignorance of the self-relying Arab to the slavish subservience with which the mass of the population of some of the most civilised portions of Europe submit to the authority of their leaders.

At the same time we agree with Mr. Lewis, that one of the main instruments of civilisation is well-placed confidence.

We agree also in the opinions contained in the striking passage with which he concludes his essay:—

> Well-placed confidence, in questions of opinion and conduct, is what sound credit is in mercantile affairs. Credit does not create wealth, neither does confidence create rectitude of judgment. The material commodity, and the mental capacity, must both pre-exist; but, in each case, the confidence turns it to the best account, and converts to a useful purpose that which might otherwise be locked up unproductively in the coffers or in the breast of its possessor.
>
> In the present state of the civilised world the progress of society will depend in part upon legislative improvement, and upon those measures which a government can command or influence; but it will depend still more upon the substitution of competent for incompetent guides of public opinion, upon the continued extension of their influence, and upon the consequent organisation of a sound authority in all the departments of theory and practice. Under the operation of these influences, it will be found that the increased mental activity which accompanies progressive civilisation is not inconsistent with social tranquillity; that the extension of knowledge among the people does not promote anarchical doctrines; and that the principle of moral authority is too strong for the principle of political revolution.*

We are ready, too, to admit that the solitary meditations of the uneducated seldom lead them to correct conclusions. The religious opinions which they frame for themselves are generally gloomily superstitious; the political ones are warped by the plausible error that poverty is caused by the unequal distribution of wealth, and might be removed by a more equitable arrangement; and their moral notions are usually hasty generalisations from a very limited ex-

* P. 61.

perience. And if this be so, it follows that the first step towards improvement depends upon the selection of trustworthy guides. But, as respects the mass of mankind, we see no approach towards such a selection. As long as they are ready to worship a Thoms, an O'Connell, or a Barbès —until an education very different in kind as well as in amount has brought them to select their idols better—we can scarcely wish them to repose their confidence more readily. Mr. Lewis's comparison of moral confidence to commercial credit is a happy illustration. Each contributes materially to the improvement of mankind; each, indeed, is essential to any considerable advance of civilisation; but ill-placed confidence and ill-placed credit are at least as mischievous as well-placed credit and confidence are beneficial.

We cannot take leave of this collection of suggestive remarks and acute inferences which has engaged us so long without frankly admitting the meagre inadequacy of the representation which we have given of it. Mr. Lewis has treated or alluded to so many subjects, he has opened so many views, often into unexplored regions, that we have been forced to select for comment only a very small portion of them. He will be studied, however, far more in his own pages than in ours; and if we have had any readers to whom his work was unknown, we have extracted from it enough to lead them to the original.

CHAPTER X.

OXFORD AND MR. WARD.*

THE early history of the University of Oxford is obscure. It appears to have consisted originally of a collection of teachers, united by no connection beyond mutual convenience, and subject to no discipline except the spiritual power of the Bishop of Lincoln, the diocesan, and the temporal jurisdiction of the authorities of the town. It was the interest of all parties that each man's pupils should reside under his roof. Hence arose the boarding-houses, at first called inns and hostelries, and afterwards colleges and halls. The masters of these houses were the rulers of the little scholastic world. They selected a rector or principal to keep order among themselves, who afterwards received the name of chancellor. But the important step, that which raised Oxford from a collection of schools into a University, was their uniting for the purpose of ascertaining the progress of their pupils, and granting to them certificates of proficiency and licenses to teach. These became, in time, the modern degrees of Bachelor and Master; the first of which gave the applicant merely a limited power of lecturing; the second, which was

* From the Edinburgh Review of April 1845.

at first synonymous with Doctor, authorised him to teach generally, to preside at the disputations which were then the tests of knowledge, and to be Master of a House.

Thus grew up the form of University government which still exists. It is a mixed exclusive constitution — the Chancellor forming the monarchical element, the Heads of the Houses the aristocratic, and the other Masters and Doctors the democratic. The excluded and, as is generally the case in exclusive governments, the larger part of the community, are the undergraduates and bachelors.

As the heads of houses were almost always ecclesiastics, and therefore deprived of lineal heirs, and separated by their habits from their collaterals, the houses must, from the beginning, have passed from owner to owner by way of succession rather than of inheritance. This suggested their incorporation. Recourse was had to the Crown, which exercised its prerogative in early times far more readily than it does now. The celebrity of Oxford attracted founders and benefactors. Large buildings were erected, and extensive estates were attached to them. Corporations aggregate, consisting of Master, fellows, and scholars, were created, who were to enjoy their endowments, partly for the advancement of learning, and partly as instruments of perpetual prayer for their founders' souls. Such was the origin of colleges.

The houses of education to which no property, beyond the land on which they stood, was attached, became the existing Halls, in which the Principal, by charter or by prescription, is a corporation sole.

Partly for purposes of education, and partly as a weapon in their constant contests with the townspeople, the members of the houses obtained a charter incorporating them as a University, which, according to the custom of those times, was frequently repeated, and at length was solemnly confirmed by parliament.

There exist, therefore, in Oxford, one corporation aggregate, the University, which includes among its members all the members of the other corporations; eighteen corporations aggregate, consisting of the members of the Colleges; and five corporations sole, consisting of the Principals of the Halls.

It does not appear that the Colleges have made much direct exercise of the right, which is incident to a corporation, of making by-laws, or, in Oxford language, statutes. Those which they received from their founders they have retained—we will not say obeyed; for the greater part of the Colleges violate their statutes systematically, and in many respects unavoidably. But the University, from the time of its incorporation, and perhaps from an earlier period, enacted statutes for the government of its own members as members of the University, and for the government of the Halls. With the internal government of the Colleges it has not ventured to interfere.

For several centuries statutes continued to be passed, often for mere temporary purposes, often inconsistent, and, from the absence of printing, little known, and frequently lost. After several ineffectual attempts had been made by his predecessors, Laud, while Chancellor, succeeded in

reducing these rude materials into a consistent whole. With the assistance of a committee appointed by the University, he framed the code called the Caroline Statutes. It was enacted by the Heads of Houses, Doctors, and Masters, approved by Laud, and confirmed by the Crown.

By these statutes, the legislative power of the University was materially restricted. The right to explain, and of course, by implication, the right to repeal any statute sanctioned by the Crown, is refused, unless the consent of the Crown be previously obtained. An absolute negative is given to the Chancellor, and also to the Vice-Chancellor, and also to the two Proctors. And the House of Convocation, consisting of Doctors and Masters, by which every new statute must be passed, has no power of initiation or amendment. It can deliberate only on proposals made to it by the Heads of Houses, called, in consequence of their weekly meetings, the Hebdomadal Board, and must accept or reject them unaltered. When we add that, except by special permission of the Chancellor, the discussions are in Latin, it may be inferred that Convocation is not a place for debate.

By the Caroline Statutes, all persons above the age of sixteen must, previously to matriculation, subscribe the Thirty-nine Articles of 1562; and every candidate for a degree must subscribe the three articles of the Thirty-sixth Canon. By these three articles this subscriber asserts—1, The King's supremacy; 2, that the Book of Common Prayer, and of ordering bishops, priests, and deacons, contains nothing contrary to the Word of God; and, 3,

That he allows the article of 1562, and acknowledges all and every the Articles therein contained, to be agreeable to the Word of God. The Canon requires the subscription to be in these words: 'I, A B, do willingly and *ex animo* subscribe to these three articles, and to all things that are contained therein.' The Vice-Chancellor is empowered to require any person in holy orders to repeat his subscription, and on his refusal or neglect, after the requisition has been thrice made, to banish him from the University.

The matriculation subscription is unexplained by any words. The Vice-Chancellor usually states to the applicant for matriculation, that it merely signifies that he is a member of the Church of England. But he has no authority to declare this to be its true interpretation, and it is obviously open to several others. It may be an expression of universal belief—that is, that the subscriber believes every portion of what he has subscribed; or it may express belief general though not universal—that is, that the subscriber generally assents to the Articles, though he doubts, or even denies, some comparatively unimportant portions: or it may express no belief at all, but be a mere declaration of conformity—a mere engagement not to oppose the doctrines of the Articles, leaving their truth undecided.

The subscription on degrees is unambiguous. Every loophole through which a tender conscience might escape is carefully guarded. The subscription is fraudulent if the subscriber thinks, or even suspects, that the Book of

Common Prayer, or of Ordination, contains a sentence contrary to the Word of God. It is fraudulent even if it be merely reluctant; *suspiria denotantur.* The subscriber asserts that *willingly*, and *ex animo*, he acknowledges *all and every* the Articles—that is, all collectively, and everyone of them separately—to be agreeable to the Word of God. As far as the words of subscription are concerned, intolerance and monopoly have done their work effectually.

But another question remains, according to what rule are the Articles to be interpreted? And this is not so simple a question as it appears at first sight. The subscriber declares his present belief in the facts and opinions stated and expressed by an instrument drawn up nearly 300 years ago. In the interpretation of that instrument, is he to adopt the meaning which he supposes to have been intended to be conveyed by those who framed the instrument, or that which would be conveyed by an instrument now framed in the same words?

In ordinary cases, all that we search for in a document is the real meaning of the writer. It matters not how obscure may be his language, how much it may deviate from common use, or how much what we suppose to be his real meaning may differ from that which is apparent. The real meaning is all that we have to do with, and if we can decipher that we are satisfied. It is thus that we read the History and the Philosophy of antiquity. It is thus that we read the Scriptures. But when an instrument is framed by one man to bind another, the meaning intended

to be conveyed by the former ceases to be the rule of interpretation. In the construction of such an instrument the general rule is, that the meaning is to be collected from the instrument itself, and that its words are to be understood in their apparent signification; although there may be reason for suspecting, or even for believing, that the framer of the instrument used them in a different sense. Were the rule otherwise, men might find themselves subject to liabilities of which they had no notice. In a question as to the exposition of an act of parliament, the lawyer who drew it would not be allowed even to state what was his own meaning. After once the Thirty-nine Articles had been adopted by parliament, the divines who drew them up could not have been permitted to explain them—and for this obvious reason, that if they had been so permitted, parliament might have found that it had been entrapped into a confession of faith different from that to which it had intended to assent.

When applied to recent instruments, this construction occasions no difficulty. It merely forces those who lay down for others rules of conduct, or tests of belief, to express their meaning plainly. But when applied to ancient documents, without doubt it produces inconvenience. If the Thirty-nine Articles are to be interpreted according to their apparent meaning, they contain much that is obscure, and much that conveys to our minds very different ideas from those which it conveyed in the sixteenth century.

It was the sense of this inconvenience that induced the

Heads of Houses, in a proceeding which we shall consider hereafter, to propose a statute which would have impliedly declared that the Articles are to be interpreted in the sense in which they were originally promulgated, 'primitus editi.' But to this rule of interpretation there is an objection that appears to be decisive. It would require from every candidate for a degree a double enquiry. First, what was the sense in which the Articles were originally promulgated; and, secondly, whether so interpreted they are agreeable to the Word of God. Such an enquiry, conscientiously pursued, would fill the whole period allotted to academic labour—a period which seldom exceeds nineteen months. Instead of Aristotle and Cicero, or Homer or Demosthenes, the student must work at Luther and Zwingle, and Calvin and Melancthon, and Eichhorn and Bohlen. Instead of philosophy, rhetoric, poetry, and history, the staple of Oxford education would consist of Oriental, Rabbinical, and Alexandrian antiquities, and polemical, scholastic, and dogmatic theology. At the end of his thirteenth term, the undergraduate would find that he had passed his three most valuable years, not in improving his taste, not in acquiring knowledge available in after-life, but in becoming master of the religious and verbal controversies of the sixteenth century. And, after all, what is the probability that he would come to the conclusion that the historical and metaphysical treatise to which we give the name of the 'Thirty-nine Articles' is right on every one of the hundreds of disputed questions which it decides?

If not—

Ibi omnis
Effusus labor atque immitis rupta tyranni
Fœdera.

The degree for which all this labour and waste of time and of youth was undergone, must be renounced, and with that degree perhaps all the prospects of a life.

But there remains a third theory of interpretation, one which was proposed more than 200 years ago, which has been lately revived by the Tractarians, and is now put forward in its most naked and unblushing form, by Mr. Ward—namely, that the Articles are to be interpreted, not in their obvious sense, nor again in the sense in which they may be supposed to have been originally framed; but in the sense, whatever it be, which the subscriber, by a mental reservation, thinks fit tacitly to affix to them. This is the *non-natural interpretation.* It has the advantages of relieving the subscriber from all difficulty. A man armed with such powers of interpretation may laugh all tests to scorn. He has only to say to himself—'When I affirm that the Church of Rome has erred, I mean that certain persons who were members of that church—Luther, for instance, and Cranmer, and Ridley, and Latimer—have erred. When I affirm that general councils have erred, even in things pertaining to God, I mean that they have erred merely in non-essentials; in short, where I say black, I mean white, or at most grey;' and he may assent to any formula whatever. But he gains this privilege by the sacrifice of all honour, all veracity—all that enables men to confide in one another.

What is there to distinguish the profession of faith made by a graduate from any other declaration, except perhaps the peculiar solemnity and deliberation by which it is preceded and accompanied? What better warrant have we for signing the Articles in a *non-natural sense* than for signing in such a sense any other statement or any other engagement? When such conduct is avowed and defended by teachers, what can we expect from their pupils, but that they will keep their promises non-naturally and give non-natural testimony?

For a long time the sounder part of the University looked on in silent shame. But when Tract Ninety appeared, the Heads of Houses published a resolution disapproving of 'modes of interpretation which reconcile subscription to the Articles, with adoption of the errors which those Articles were designed to counteract.' This, however, was a mere declaration of opinion; the opinion without doubt of a very respectable body, but unenforced by any statutory authority. At length when Mr. Ward publicly defied the University—when he held himself out as an instance of the inability of her tests to exclude an avowed Roman Catholic—when he proclaimed his readiness to subscribe the Articles as often as they should be tendered to him, and, at the same time, his abhorrence of the Reformation and his adhesion to Romanism—the University accepted the challenge. The Hebdomadal Board, which possesses, as we have seen, the initiative in legislation, resolved to punish the principal, or at least the most recent offender; and by rendering the test of

subscription more stringent and more general, to arrest those who now manage to elude it.

For this purpose, on December 13, 1844, the Board issued a notice, summoning, for February 13 following, a convocation, in which the three following measures should be proposed: 1st, A Resolution that certain passages in the Rev. W. G. Ward's Ideal Church

Are utterly inconsistent with the Articles of the Church of England, and with the declaration in respect of those Articles made and subscribed by the said W. G. Ward, previously to, and in order to his being admitted to the degrees of B.A. and M.A. respectively, and with the good faith of him, the said W. G. Ward, in respect of such declaration and subscription. 2nd. That the said W. G. Ward has disentitled himself to the rights and privileges conveyed by those degrees, and is hereby degraded from the said degrees respectively.

3rd. A new statute amending the Caroline Statute, which authorises the Vice-Chancellor to test clerical members of the University by requiring them to repeat their subscription. By the amended statute, the Vice-Chancellor would have been authorised to put the test to every person, whether clerical or lay, and to require him previously to pledge his faith to the University, that he would subscribe all and each of the Articles in the sense in which he sincerely believed them to have been originally promulgated, and now tendered to him as a certain test of his opinions.

The last proposal excited disapprobation deep and almost universal. It was clearly illegal as an amendment of the Caroline Statutes without the consent of the Crown—a

consent which was not asked, and certainly would not have been given. It would have been mischievous, as subjecting a new and more numerous class of persons to an inquisitorial power, which is felt to be so hateful that it has not been exercised within living memory. It would have destroyed the distinction made by the Caroline Statutes between subscription on matriculation and subscription on graduation. It would have enabled the Vice-Chancellor to test the doctrinal opinions of every member of the University, from the freshman to the senior doctor. It would have enabled him to stand with his test in his hand at the door of the Convocation-house, and require every barrister, every physician, and every country gentleman to state his belief in all and every of the Thirty-nine Articles on pain of expulsion. Everyone who refused it was, in the classical language of the proposed statute, to be *exterminatus* and *banniatus*. And, lastly, it would have sanctioned a new, and, as we have seen, a most mischievous rule of interpretation.

Each of the other two proposed measures was open to serious objections. The first asserted that the extracts from Mr. Ward's book were 'utterly inconsistent with the good faith of the said W. G. Ward, in respect of his declaration on subscribing the Articles.' Now Mr. Ward's declaration was obviously no breach of faith, unless he disbelieved in the Articles at the time when he made it. But of this there is not the slightest evidence. The presumption is that he then believed them, or at least that, with the carelessness as to subscription which has prevailed

up to this day, he signed them with a general feeling of acquiescence which he did not think it advisable to probe too deeply. Nor, of course, can it be said that his subsequent change of opinion was a breach of faith; for even in Oxford, opinion is not yet treated as a voluntary act. That Mr. Ward, in retaining as a Romanist the fellowship which he had obtained as an Anglican, was guilty of a breach of faith, is true. And it is also true that the immorality of this conduct was aggravated by the pretences under which he sought to defend it—pretences which, as we have seen, would destroy all confidence in human promises and in human testimony. But this breach of faith, and this immorality, the indictment against him omits. With unhappy dexterity, the indictment charges him with a breach of faith of which he is probably innocent, and passes by one of which he is avowedly guilty.

The second proposition, the degradation of Mr. Ward, was, we are inclined to think, illegal. In the first place, Convocation has no penal power. That power is vested in the Chancellor, or, in his absence, in the Vice-Chancellor. And, secondly, the punishment inflicted by the Caroline Statutes on those 'who think otherwise than aright on the Catholic faith, or on the doctrine or discipline of the Church of England,' is not degradation, but banishment.

The third proposition was withdrawn, and in its place was substituted a declaration, nearly in the words of the original declaration issued by the Heads of Houses on the appearance of Tract Ninety.

That modes of interpretation evading rather than explaining

the Articles, and reconciling subscription to them, with the adoption of the errors which they were designed to counteract, defeat the object, and are inconsistent with the due observance of the statutes requiring subscription.

A full Convocation at Oxford is an imposing spectacle. The Theatre, one of Wren's noblest works, with its rostra and semicircular galleries, is admirably adapted to enable a large assembly to see and be seen, and to hear a person speaking from one of the rostra, or from the centre of the first gallery, though it would be unsuited to a debate in which men spoke from their places. It is fit for its purposes—solemn proceedings and set speeches. On February 13 it must have contained 1,500 persons, for nearly 1,200 voted, and the neuters must have exceeded 300. After the first resolution had been read, Mr. Ward was called on for his defence. He requested to be allowed to speak English, and this permission was granted to *him*, and to him only; the Vice-Chancellor probably thinking that there was more to be lost than gained by discussion.

To those who did not know the state of Mr. Ward's domestic relations, or that the tragedy was after all to end like a comedy—by marriage—his speech in defence must have appeared unaccountable. It was exceedingly well delivered; boldly, clearly, with great self-possession, perhaps too much, for the ease sometimes approached flippancy; but the matter seemed intended *auditores malevolos facere*. Every statement and every inference that could offend their prejudices, irritate their vanity, or wound their self-respect, was urged with the zeal of a candidate for martyrdom.

In deference, he said, to the advice of his lawyer, he stated that his opinions had entirely changed since his subscription; and, even if the case had been otherwise, he denied the legal right of convocation to punish by degradation. These matters, however (which were the strong points of his case), he passed over briefly. He then restated his full assent to all the doctrines of Rome; he restated his readiness to repeat his subscription; he repeated that he believed, and was ready to subscribe the Articles in a *non-natural* sense, and he affirmed that the *imponens* of subscription, whether the Church or Parliament or the University, for he left it in doubt which of these was the *imponens*, intended that they should be so subscribed. For that if the *imponens* did not so intend, he must have intended that they should not be subscribed at all. He contrasted the Articles in their natural sense with the prayer-book, with one another, and with the common feelings and opinions of mankind; and then put it to his hearers, High Church and Low Church, Calvinistic and Arminian, whether their subscription was not as non-natural as his own.

The prohibition of English had its intended effect. Only one speech was attempted in Latin. In consequence of the position of the speaker in the area, and pressed on by a dense crowd, it was impossible to distinguish more than that he opposed the degradation on the ground that Mr. Ward's errors, if errors they were, were not the errors of infidelity. 'Nil dixit,' he exclaimed, 'Dominus Gulielmus Ward, contra Deum Optimum Maximum; nil dixit

contra Dei Filium unigenitum; nil dixit contra Spiritum Sanctum.' In other words, he said, my client never stole a lion; he never stole an elephant; he never stole a tiger. That may be true, would be the answer; but he is indicted for stealing a sheep. His innocence, which we thoroughly believe as to lions, tigers, and elephants, has nothing to do with the question of sheep-stealing.

The first resolution was carried by 777 to 391. The second, by 569 to 511. Had Mr. Ward been silent, it would probably have been rejected.

The third resolution, condemning non-natural modes of interpretation, was put last. But now the two Proctors rose, and uttered (or seemed to utter, for in the uproar which accompanied their rising no individual voice could be heard) the words which, except on one memorable occasion, no one now living ever before heard pronounced in Convocation. *Nobis Procuratoribus non placet.* Whereupon, without any formal dissolution—indeed, without a word more being spoken, as if such an interposition stopped all business—the Vice-Chancellor tucked up his gown, and hurried down the steps that led from his throne into the area, and thence out of the Theatre; and in five minutes the whole scene of action was cleared.

Thus of the three propositions submitted to Convocation, the first and second, against each of which there were grave objections, have been carried. The third, to which we should have supposed that every man of common veracity would have assented, has failed. It is said that Mr. Ward means to appeal as soon as he has found out a Visitor;

and that the Hebdomadal Board will propose again the rejected resolution as soon as there are fresh Proctors. If both these things take place, we think it probable that two at least of the decisions of Februrary 13 will be reversed—that Mr. Ward will be restored, and non-natural interpretation censured.

We must warn, however, the majority of Convocation not to fancy that, by degrading Mr. Ward, or by censuring non-natural interpretation, they have advanced towards giving peace to the University. We are convinced that, for that purpose, they must move in a totally opposite direction. The joint exertions of the Tractarians and the Hebdomadal Board have evoked a spirit who appears only at long intervals, and whose appearance, while he is in activity, is ever marked by dissension and ruin—the spirit of Nonconformity.

The tranquillity of the Georgian period is over. During those halcyon days men subscribed the Articles upon trust, and as a matter of course. Hereditary and avowed Protestant Dissenters and Roman Catholics were excluded; or, to speak more correctly, they never thought of presenting themselves. But no undergraduate member of the Church of England was troubled by a doubt. The distinction between subscription at matriculation, and subscription at degrees, was little thought of, and indeed little understood. The three Articles of the Thirty-sixth Canon, on which the binding force of subscription depends, are not to be found in the University statutes, or in any of the ordinary editions of the Thirty-nine Articles. They

are not even alluded to in the work which is the Oxford text-book on the Thirty-nine Articles—'Prettyman's Theology.' We doubt whether one-tenth or one-twentieth of those who have subscribed the Thirty-sixth Canon were aware, three months ago, of its existence. But this ignorance is at an end. Every candidate for a degree will now be aware that he has solemnly to declare that he objects to nothing in the prayer-book, and that he acknowledges *all and every* the Thirty-nine Articles to be agreeable to the Word of God. Many, without doubt, will think that they cannot afford to keep a conscience, and will sign blindly without enquiry, lest enquiry should seduce them into doubt. But of those who will feel it their duty to enquire, what proportion will find the result to be universal and perfect conviction?

Some will think it impossible to reconcile the Calvinistic dogmata of the Articles with the Arminian colour of the prayer-book.

Others will be startled at the doctrine that, whoever will be saved, it is *above all things* necessary that he hold the Catholic faith. They may doubt whether benevolence and justice may not be even more conducive to salvation than right notions as to the mysteries of substance, person, and procession. Few will be able to affirm that all who disbelieve, or who doubt any portion of that faith—all members of the Greek church—all Arians and Socinians—all mankind, in short, except the comparatively small portion of the world who are orthodox Trinitarians, 'without doubt shall perish everlastingly;' and many will find

difficulty in persuading themselves that the damnatory clauses are not part of the Athanasian Creed.

Some may be inclined to think it probable that every 'man *will* be saved by the law or sect which he professeth, so that he be diligent to frame his life according to that law, and the light of nature.' Others, though they may admit this doctrine to be erroneous—though they may admit that a virtuous Socinian or Mahometan will be saved in spite of his law, and not *by* it—may not venture to pronounce *accursed* all those who presume to hold it.

Some may think it possible that works of charity or self-devotion, though done before the grace of Christ, may be pleasing to God; and many will doubt whether they 'have the nature of sin.'

Some may doubt whether it be true that the forms of ordination contain nothing superstitious. They may question the right of the ordainer to say to the intended priest—'Whose sins thou dost forgive, they are forgiven; and whose sins thou dost retain, they are retained.'

Others may think the Article on a Christian man's oath a non-natural explanation of the text—'Swear not at all.'

Others, again, may be unable to make up their minds as to the political theories of the Thirty-seventh and Twenty-first Articles. They may doubt whether the Queen's prerogative is, that 'which we see to have been always given to all godly princes in Holy Scriptures by God Himself.' Some may think that Her Majesty reigns by virtue of the Act of Settlement rather than by Divine right, and others

that there is some danger in making a sovereign's title depend on his godliness.

Others, again, may doubt the lawfulness of capital punishment; others that of war; and others, again, whether it be true that General Councils may not be called together without the commandment and will of Princes.

Besides their doctrinal and political speculations, the Thirty-nine Articles indulge in historical and philosophical assertions.

Is it certain that the Old Testament contains offers of everlasting life? Is it certain that the Old Fathers, among whom the authors of Job, of Ecclesiastes, and of the Psalms, of course, are to be included, did not look only for transitory promises? We always supposed that the Divine Legation proceeded on the contrary assumption.

Is it certain that those who arranged the Canon of Scripture were right when they included Ecclesiastes and Cantica, and excluded Ecclesiasticus?

Is it certain that the Second Book of the Homilies contains a godly and wholesome doctrine necessary for the sixteenth century?

We know that Dr. Arnold was at one time incapable of subscribing, in consequence of a doubt whether the Epistle to the Hebrews did or did not belong to the apostolic age. May not the same doubt afflict others?

We have tired our readers, and yet not mentioned one hundredth part of the questionable points with which the Articles swarm. And, we repeat, what is the probability

that all candid enquirers will arrive at the conclusion, that *all and every* of them are agreeable to the Word of God? Will one-half arrive at that conclusion? Will one-quarter? Will one-tenth? And what is to become of those who do not? Are they to give up the honours, the privileges, and the emoluments of the University, or are they stubbornly to beat down their consciences, and sign against their will and their conviction? From this time the Thirty-sixth Canon will be a grating which will admit the careless, the dull, the ignorant, and the unprincipled, to the degrees, the fellowships, the tuition, and the government of the University, and will exclude the diligent, the acute, and the conscientious.

We feel, and have again and again expressed indignation at the subterfuges by which the test is evaded—we feel much more against the intolerance by which it is imposed. The dishonesty of the slave is only despicable; the cruelty of the tyrant is hateful. All Great Britain was roused, a few years ago, by stories of the mischiefs of Factory Labour. We were told that those who had been subjected to it in youth grew up stunted or distorted. And the interposition of the legislature was required and granted. But is not the stunting and distorting the mind a still more mischievous oppression? And can the intellect be more effectually depressed and warped than by being tempted to seek nothing but premises for pre-appointed conclusions? or the moral feelings be more effectually depraved, than by being engaged in constant internal conflicts in which success cannot be honestly obtained?

To a certain degree, experience assists us in estimating the probable influence of such an education, by comparing the effects of a comparatively lax with a comparatively strict test. For many years past, Cambridge has been subject to the former, and Oxford to the latter. It is true that Cambridge is subject to the severer test inflicted on Heads of Houses by the Act of Uniformity; but she herself imposes no test, except a declaration previously to a degree, that the candidate is a bonâ fide member of the Church of England. And it is true, also, that the Oxford test has not attracted, in times past, the attention, and consequently has not exercised the influence, which, we believe, will belong to it in future. However, though neither the freedom of Cambridge nor the slavery of Oxford has been complete, they have been sufficient to give some indication of the probable results of each system.

We believe that few Oxonians will be bigoted enough to deny, that at the bar, on the bench, in science—in short, wherever success depends on moral and intellectual vigour and independence—Cambridge now has, and long has had, the decided superiority. Nor does this superiority appear to have been purchased by letting in the errors and the dissensions which it is the supposed office of tests to shut out. Cambridge has been at least as successful as Oxford in excluding the inroads of Romanism. No establishments for conversion have been erected in her neighbourhood. Her fellows do not declare their abhorrence of Protestantism. None of her tutors have been ever suspected of lecturing on the modes of explaining away its doctrines.

It is *safe* to send a young man to Cambridge. She has been at least as successful as Oxford in preserving the internal peace of her society. She has not passed a statute declaring her utter distrust in the orthodoxy of the most learned and the most acute among her professors. She has not inflicted on another, less distinguished but still eminent both in station and in learning, a penal suspension from his functions. Her combination-rooms are not hostile camps, nor her colleges or her pulpits instruments for the propagation of contradictory precepts. Her public lecture-rooms have not become deserts—nor her divinity schools scenes of wrangling. No Head of a House has posted in his hall a notice, that all who presume to attend the lectures of the Regius Professor of Divinity will be denied testimonials for orders. No candidate for her degrees has brought a legal action against his examiner, and forced the University first into a suspension of her accustomed modes of examination, next into an abortive attempt to legalise them, and at last into a recurrence to the old monkish forms of disputation. She summons no convocation to pass *privilegia* against her members. Her Vice-Chancellor is not assailed by defiances from graduates demanding to be degraded. She does not exhibit, in short, the symptoms which precede political dissolution.

How, then, is Oxford to escape the fate which the intolerance that enacted the Caroline Statutes, and the apathy not unmixed with intolerance that has preserved them unrepealed, seem to prepare for her? If there were any use

in suggesting a course which we know will not be adopted, we should say, by following the advice of Dr. Hampden,* and abolishing all tests except those which Parliament has imposed, and which Parliament, therefore, alone can remove. The next best expedient would be to follow Dr. Paley's advice, and change subscription from a profession of faith into an engagement of conformity. If, as we fear is the case, the *genius loci*, the present temper of the place, renders this impracticable, as a last resource the plan might be adopted which has apparently succeeded at Cambridge. No test should be required on matriculation; and no test previously to a degree, except that the candidate is a bonâ fide member of the Church of England. An engagement might be added to withdraw from the University on ceasing to hold the doctrines of the Church of England, and a tribunal created to decide on any imputed breach of this engagement. To decide such questions by *ψηφισματα*, by judicial acts performed by a deliberative assembly, is revolutionary. It is an imitation of the worst practices of the worst democracies.

Under such an arrangement, no one would be necessarily excluded from the studies or the honours of the place. A Dissenter, or a Roman Catholic, if he thought fit to comply with the usages, and receive the instruction of his college, might pass his examination, and be enrolled in a class, and obtain an undergraduate's prize. But he would be excluded from a degree, and therefore from the government,

* Observations on Religious Dissent, p. 39. 1834.

and, generally speaking, from the emoluments of the University. The sincerity of a graduate's declaration must be left to his own conscience; but, if he broke his engagement of conformity, the proposed tribunal would afford a remedy, which it will soon be found that Convocation does not.

THE END.

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